

No. 82-1066

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In the Supreme Court of the United States

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UNITED STATES OF AMERICA, APPELLANT

v.

HARRY PTASYSKI, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF WYOMING

JOINT APPENDIX

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II

RELEVANT DOCKET ENTRIES

DISTRICT COURT ENTRIES (Ptasynski, et al.)

10/14-80	1 COMPLAINT
12/11/80	11 AMENDED COMPLAINT.
12/22/80	12 MOTION of the U.S. to dismiss complaint.
5/4/81	24 MOTION of the State of Texas for Leave to intervene.
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6/10/81	29 MOTION by State of Louisiana to Intervene as pltf.
	44 SECOND AMENDED AND SUPPLEMENTAL COMPLAINT.
7/2/81	46 ORDER granting motions of States of Texas and Louisiana to intervene. Cys to counsel.
	47 ORDER granting motion to file a second amended and supplemental complaint and ordering same filed instanter. Cys to counsel.
7/29/81	51 COMPLAINT IN INTERVENTION of State of Louisiana (allowed filed as of order of 7-2-81).
	54 ORDER denying deft's motion to dismiss as to pltfs Partridge, Ptasynski, Avery, Johnson and Calvin Petroleum; granting deft's motion to dismiss as to all remaining defts, provided that such pltfs shall remain parties to the action as permissive intervenors; giving defts 30 days from date of this order to file answer. cc counsel.
9/8/81	55 ANSWER of deft USA to Texas's Petition in Intervention.
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	71 AFFIDAVIT of Hoyle H. Hamilton.
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- 06/10/82 84 ORDER consolidated C80-0302 and C82-0050. cc counsel.
- 11/04/82 89 MEMORANDUM OPINION.
- 90 JUDGMENT finding generally for the pltfs and against the deft and ordering that pltfs recover of and from deft the amount of windfall profit taxes paid by pltfs in March 1980 for C80-302 and from March through December 1980 in C82-050, in such sum as may be determined by pltfs and deft with interest as provided by law and further ordering that all proceedings in this matter be stayed until a higher court has had occasion to pass upon the correctness of the trial court's decision. cc counsel.
- 11/15/82 91 AMENDED JUDGMENT ordering that Memorandum Opinion and judgment are directed only to Title I of P.L. 96-223 found at 26: 4986 and 4998 inclusive; further ordering that summary judgment is entered in accordance with Memorandum Opinion and the Windfall Profit Tax on Domestic Crude Oil, 26:4986 to 4998 inclusive, Title I of the Crude Oil Windfall Profit Tax Act of 1980 is held unconstitutional; further ordering that pltfs recover from deft amt of windfall profit taxes paid by pltfs in March of 1980 for C80-302 and March thru December 1980 for C80-050, in such sum as alleged in the Second Supplemental and Amended Complaint with interest as provided by law; further ordering that all proceedings are stayed until a higher court has had occasion to pass upon the correctness of the trial court's decision, and further ordering that final judgment is entered accordingly. cc counsel.
- 11/18/82 92 NOTICE OF APPEAL to the Supreme Court of the United States from the Judgment and Amended Judgment filed in this Court 11/04/82 and 11/15/82. Cy of notice of Clerk, Supreme Court of the United States and counsel.

DISTRICT COURT DOCKET ENTRIES (Partridge)

- 02/23/82 1 COMPLAINT.
- 05/13/82 5 ANSWER of U.S.
- 06/10/82 6 ORDER consolidated cases C80-0302 and C82-0050. cc counsel.
- 11/04/82 7 MEMORANDUM OPINION.

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8 JUDGMENT finding generally for the pltfs and against the defts and ordering pltfs recover from deft amt of windfall profit taxes paid by pltfs in March 1980 for C80-032 and from March through December 1980 in C82-050 in such sum as may be determined by pltfs and deft with interest as provided by law; further ordering that all proceedings in this matter are stayed until a higher court has had occasion to pass upon the correctness of the trial court's decision. cc counsel.

11/15/82

9 AMENDED JUDGMENT ordering that Memorandum Opinion and judgment are directed only to Title I of P.L. 96-223 found at 26:4986 to 4998 inclusive; further ordering that summary judgment is entered in accordance with Memorandum Opinion and the Windfall Profit Tax on Domestic Crude Oil, 26:4986 to 4998 inclusive, Title I of the Crude Oil Windfall Profit Tax Act of 1980 is held unconstitutional; further ordering that pltfs recover from deft amt of windfall profit taxes paid by pltfs in March of 1980 for C80-302 and March thru December, 1980 for C80-050, in such sum as alleged in the Second Supplemental and Amended Complaint with interest as provided by law; further ordering that all proceedings are stayed until a higher court has had occasion to pass upon the correctness of the trial court's decision, and further ordering that final judgment is entered accordingly. cc counsel.

11/18/82

10 NOTICE OF APPEAL to the Supreme Court of the United States from the Judgment and Amended Judgments filed in this Court 11-04-82 and 11-15-82. Cy of notice to Clerk, Supreme Court of the United States and counsel.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

No. C80-0302K

**INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFF**

v.

UNITED STATES OF AMERICA, DEFENDANT

**PETITION IN INTERVENTION OF
THE STATE OF TEXAS**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the intervening Plaintiff State of Texas (Texas), by and through its Attorney General Mark White, and files this petition for declaratory and injunctive relief against the United States of America.

In support of its motion the State of Texas would show the following:

NATURE OF THE ACTION

1. This action challenges the constitutionality of the Crude Oil Windfall Profit Tax Act of 1980 (Windfall Profit Tax) (P.L. 96-223). It is an action for a judgment (a) to declare that the Windfall Profit Tax unconstitutionally imposes a geographically non-uniform excise tax on domestic crude oil contrary to the uniformity clause of Article I, Section 8, Clause (1) of the United States Constitution; (b) to declare that the sovereign interest of Texas in continuing to provide for the broad class of essential individual conservation expectations held by citizens involved in the production of hydrocarbon resources is impeded; and (c) to enjoin the Defendant from enforcing the Windfall Profit Tax.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1331(a), as amended, P.L. 94-574. Jurisdiction is founded on the existence of a federal question and pursuant to the amendments, P.L. 94-574, the amount in controversy is irrelevant since this action is brought against the United States.

3. The jurisdiction of this Court is also invoked under 28 U.S.C.A. § 1251(b)(2). Jurisdiction is founded upon the appropriateness of Texas' participation in this Court of concurrent jurisdiction rather than upon the non-exclusive original jurisdiction of the Supreme Court.

4. The anti-injunction provisions of 26 U.S.C.A. § 7421 do not apply to Texas as Plaintiff-Intervenor in the present case because Texas is not a "person" within the purview of said Act, and for the further reason that the petition filed by Texas is not intended for the purpose of enjoining or restraining the assessment or collection of the tax but rather for the adjudication of the Windfall Profit Tax's constitutionality.

5. Venue is proper in this District under 28 U.S.C.A. § 1391(e).

THE PARTIES

6. The intervening Plaintiff State of Texas is a sovereign state, having entered the Union on December 29, 1845. Lands within Texas, exclusive of state-owned lands and certain other lands, are subject to the limited geographical scope of the Windfall Profit Tax. The duties of the State of Texas to provide various essential hydrocarbon resource conservation services to the citizens of Texas are codified in Title 3 of the Texas Natural Resources Code Annotated (1978), Sections 85.000 to 103.046. Not the least of these hydrocarbon resource conservation services are the maximumization of recovery of oil and gas in place, the protection of correlative rights, and the prevention of physical waste; all of which are realized by the preferences historically given stripper well production relative to the large potential production wells by the State of Texas.

7. Defendant is the United States of America.

LEGISLATIVE BACKGROUND

8. The Windfall Profit Tax (P.L. 96-223) imposes an excise tax on most domestic crude oil produced after February 29, 1980. This tax is imposed upon the holders of economic interests in the oil and is collected by the first purchaser of the oil. The Windfall Profit Tax provides for five categories of exemptions including one based upon the geographic location of the well from which the oil is produced.

9. The geographic exemption is found in Section 101(a)(1) of the Windfall Profit Tax [26 U.S.C.A. § 4994(e)].

10. Section 101(a)(1) exempts Alaskan oil which is defined as any crude oil, except oil produced from the Sadlerochit Reservoir, which is produced:

(1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or

(2) from a well located on the northerly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System.

11. The legislative purpose of the Windfall Profit Tax was to reduce dependence of the United States upon imported oil and to encourage domestic production of oil. No conservation purpose was contemplated or articulated and none is served.

12. Neither the Windfall Profit Tax nor its legislative history purport to provide adequate substitutes for the protection of essential individual conservation rights provided by Texas, to bear the increased costs of deprivation of these essential service, or to vindicate other essential or fundamental rights under the Fourteenth Amendment.

FACTUAL BACKGROUND

13. Neither Texas nor any other state except Alaska has any lands north of the Arctic Circle or north of the Alaska-Aleutian Range divide.

14. Texas has long responded to its individual citizens' expectations for essential hydrocarbon resource conservation service. Title 3, Texas Natural Resources Code Annotated (1978), Sections 85.001 to 103.046 codifies Texas' duties to provide for the protection and vindication of individual conservation rights. Enforcement of conservation statutes is properly a state function and has historically been discharged as such.

15. The Windfall Profit Tax is an excise tax on oil production which will increase the cost of production from stripper oil wells and cause their premature abandonment.

16. Texas has consistently encouraged stripper or marginal well production relative to large potential well production in order to protect correlative rights, to prevent

physical waste, and to guarantee the maximum recovery of oil in place. This encouragement is necessary since stripper production is near to the point of well abandonment.

FIRST CLAIM FOR RELIEF

17. The Windfall Profit Tax is unconstitutional because it is an excise tax applied in a geographically non-uniform manner. Article I, Section 8, Clause (1) of the United States Constitution guarantees to the states as separate sovereigns that excise taxes will be uniform in geographic application so that one part of the Union may not be gratified at the expense of another.

18. The attempt in the legislative history to justify the non-uniform provisions of the Windfall Profit Tax is contrary to the history, spirit, and the letter of the uniformity clause. Non-uniform taxes are *prima facie* suspect under the uniformity clause and cannot be justified by the mere reasonableness of the exception under consideration.

19. A substantial question of constitutional significance relating to the ability of a government of enumerated powers to act beyond the clearly defined scope of those enumerated powers is therefore presented.

SECOND CLAIM FOR RELIEF

20. The Windfall Profit Tax necessarily deprives individuals of the benefit of the provision of essential hydrocarbon resource conservation services by the State of Texas.

21. Both Congress and the courts have recognized the essential nature of these individual conservation benefits and have properly left provision for these rights to the states. The Tenth Amendment guarantees to the states that they have retained the powers not expressly delegated to the federal government. Both historically established popular understanding as well as constitutional allocation of government function define those powers which are reserved to the states. Congress through the Windfall Profit Tax has unreasonably impeded Texas' ability to carry out conservation responsibilities and as a result has exercised nondelegated powers and violated the Tenth Amendment's reservation to the states. This congressional interference is *prima facie* improper since Congress has neither met its burden of providing an adequate substitute conservation service, compensated individuals for the physical waste and

loss of economically recoverable minerals in place caused by premature production nor justified the Windfall Profit Tax as an exercise of congressional power under Section 5 of the Fourteenth Amendment to the United States Constitution.

22. Therefore, a substantial question of constitutional significance is presented relating directly to the proper division of power and sovereignty between the federal government and the states as a part of a federal system of government.

WHEREFORE, the State of Texas prays this Court to enter an order granting the following relief:

1. A declaration that the Crude Oil Windfall Profit Tax Act of 1980 is unconstitutional and void as an improper non-uniform excise tax.

2. A declaration that the Crude Oil Windfall Profit Tax Act of 1980 is unconstitutional and void as an improper exercise of nondelegated powers and a violation of the Tenth Amendment's reservation of powers to the states.

3. An injunction to prohibit the Defendant from collecting excise taxes under the Crude Oil Windfall Profit Tax Act of 1980.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

No. C80-0302K

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

COMPLAINT IN INTERVENTION
OF STATE OF LOUISIANA

JURISDICTION AND VENUE

1. This is an action for both declaratory judgment and injunctive relief challenging Title I of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223 (codified in scattered sections of the Internal Revenue Code) ("the WPT" or "the Act"). Intervenor seeks a declaratory judgment that the Act is unconstitutional because it violates both the Uniformity Clause (Article 1, Section 8, Clause (1)) and the Tenth Amendment of the United States Constitution and an injunction enjoining the officer or officers of the United States charged with the duty of enforcing the Act from enforcing that Act.

2. This action arises under the Constitution and Internal Revenue laws of the United States. This Court has jurisdiction under 28 U.S.C. § 1331(a). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. Injunctive relief is authorized by 28 U.S.C. § 1361.

3. Venue in this district is proper under 28 U.S.C. § 1391(e).

THE PARTIES

4. The association plaintiffs are organizations of independent domestic oil producers, explorer-producers of crude oil, and royalty owners of crude oil. The individual members of these organizations have paid and, in the future, will be required to pay the tax under the Act. Allegations concerning these plaintiffs are more fully set forth in paragraphs 4 and 5 of the plaintiffs' Amended Complaint,

and are incorporated by reference as if fully set forth herein.

5. The individual taxpayer plaintiffs, Harry Ptasynski, John Partridge, Arch W. Deuel, William Edward Wolff, Berton W. Avery, Goldie Avery, Frederick S. Johnson, and Calvin Petroleum Corp., are royalty owners or independent domestic oil producers. The first purchaser of domestic taxable crude oil from these individual taxpayer plaintiffs has withheld and deducted payment equal to the calculated or estimated amount of the tax as to each of the plaintiffs, and has, on information and belief, paid such funds into the United States Treasury. The individual taxpayer plaintiffs have filed claims for refund and received notices of disallowance of those claims as more fully set forth in paragraphs 6-13 of the plaintiffs' Amended Complaint, and the allegations in these paragraphs are incorporated by reference as if fully set forth herein.

6. Defendant is the United States of America. The Commissioner of the Internal Revenue Service is the officer of the United States charged with the enforcement of the WPT.

7. The intervenor-plaintiff is the State of Louisiana. Louisiana is the third ranking crude oil producing state (behind Alaska and Texas) in the United States. Approximately 10 percent of the proven oil reserves in the United States are contained in Louisiana.

THE STATUTORY FRAMEWORK

8. Title I of the WPT imposes an excise tax on the holders of economic interests in most domestic crude oil produced in the United States after February 29, 1980. This tax is collected, in most cases, by the first purchaser of the oil. The Act provides for five categories of exemptions, including one based upon the geographic location of the well from which the oil is produced (i.e., "any exempt Alaskan oil"). Section 101(a)(1) of the Act, I.R.C. § 4991(b).

9. Section 101(a)(1) of the Act, I.R.C. § 4994(e) defines "exempt Alaskan oil" as

any crude oil "other than Sadlerochit oil" which is produced

- (1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or,
- (2) from a well located on the northerly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System.

FIRST CLAIM FOR RELIEF

10. The United States Constitution, Article I, Section 8, Clause (1) states that:

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

11. The State of Alaska is the only state in the United States with lands north of the Arctic Circle or north of the Alaska-Aleutian Range divide.

12. The Crude Oil Windfall Profit Tax is an excise tax. Section 101(a)(1) of the Act, I.R.C. § 4986(a). Because the tax is not levied uniformly throughout the United States, it violates Article I, Section 8, Clause (1), of the United States Constitution.

13. This lack of uniformity violates the sovereign interest of the State of Louisiana protected by Article I, Section 8, Clause (1) of the United States Constitution and imposes an unequal and discriminatory tax burden on the oil and the producers of oil located within the State of Louisiana.

14. The WPT states that the target amount of revenue to be generated by the Crude Oil Windfall Profit Tax is \$227.3 billion and states that the tax will be phased out over a 33-month period following the collection of this target amount. I.R.C. § 4990. Because the tax burden is not evenly distributed, the oil produced within the State of Louisiana must bear a disproportionate share of this target amount.

SECOND CLAIM FOR RELIEF

15. The Tenth Amendment of the United States Constitution states that:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people.

16. The power to regulate the production and conservation of a state's energy resources is one not specifically delegated to the United States and is consequently reserved to the state.

17. The WPT creates economic disincentives for the production of crude oil and discourages that production within the areas subject to the tax. This has interfered, and will continue to interfere, with the state's ability to regulate and conserve energy production within the state and has diminished, and will in the future diminish state severance tax revenues.

18. The WPT interferes with the sovereign state function of regulating and conserving natural resource production within the State of Louisiana in violation of the Tenth Amendment of the United States Constitution.

WHEREFORE, the State of Louisiana respectfully prays that this Court:

(a) adjudge and declare that Title I of the Crude Oil Windfall Profit Tax Act of 1980 violates the uniformity clause of the United States Constitution (Article I, Section 8, Clause (1)) and is therefore unconstitutional;

(b) adjudge and declare that Title I of the Crude Oil Windfall Profit Tax Act of 1980 violates the Tenth Amendment to the United States Constitution and is therefore unconstitutional;

(c) permanently enjoin and restrain the Commissioner of the Internal Revenue Service, the officer of the United States charged with enforcement of Title I of the Crude Oil Windfall Profit Tax Act of 1980, from enforcing, implementing, or taking any further action which results in the assessment and collection of the Windfall Profit Tax; and,

(d) provide such other relief as the Court may deem just and proper.

By their Attorneys:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-0302

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
AMERICAN ASSOCIATION OF PETROLEUM LANDMEN,
ASSOCIATION OF OILWELL SERVICING CONTRACTORS,
EASTERN KANSAS OIL AND GAS ASSOCIATION, LIAISON
COMMITTEE OF COOPERATING OIL AND GAS ASSOCIATIONS,
ARKOMA BASIN INDEPENDENT GAS PRODUCERS
ASSOCIATION, CALIFORNIA INDEPENDENT PRODUCERS
ASSOCIATION, ILLINOIS OIL AND GAS ASSOCIATION,
INDIANA OIL AND GAS ASSOCIATION, INDEPENDENT OIL
AND GAS ASSOCIATION OF WEST VIRGINIA, INDEPENDENT
PETROLEUM ASSOCIATION OF MOUNTAIN STATES, KANSAS
INDEPENDENT OIL AND GAS ASSOCIATION, LOUISIANA
LANDOWNERS ASSOCIATION, INC., MICHIGAN OIL AND GAS
ASSOCIATION, NEW YORK STATE OIL PRODUCERS
ASSOCIATION, INDEPENDENT PETROLEUM ASSOCIATION OF
NEW MEXICO, KENTUCKY OIL AND GAS ASSOCIATION,
LOUISIANA ASSOCIATION OF INDEPENDENT PRODUCERS
AND ROYALTY OWNERS, NATIONAL STRIPPER WELL
ASSOCIATION NORTH TEXAS OIL AND GAS ASSOCIATION,
OHIO OIL AND GAS ASSOCIATION, PANDHANDLE PRODUCERS
AND ROYALTY OWNERS ASSOCIATION, PENNSYLVANIA OIL
AND GAS ASSOCIATION, TENNESSEE OIL AND GAS
ASSOCIATION, VIRGINIA OIL AND GAS ASSOCIATION,
OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION,
PENNSYLVANIA GRADE CRUDE OIL ASSOCIATION, PERMIAN
BASIN PETROLEUM ASSOCIATION, TEXAS INDEPENDENT
PRODUCERS AND ROYALTY OWNERS ASSOCIATION, WEST
CENTRAL TEXAS OIL AND GAS ASSOCIATION, HARRY
PTASYSKI, JOHN PARTRIDGE, BERTON W. AVERY, GOLDIE
AVERY, FREDERICK S. JOHNSON, AND CALVIN PETROLEUM
CORPORATION, PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

COME NOW the plaintiffs and for their amended complaint against defendant respectfully allege and represent as follows:

COUNT ONE**I. Nature of the Action**

1. This action arises under the Internal Revenue Laws of the United States of America. This action challenges the constitutionality of Title I of the Crude Oil Windfall Profit Tax Act of 1980 (the "Act") (Public Law 96-223 entitled "Windfall Profit Tax on Domestic Crude Oil"). Although called a tax on profits, the tax imposed by the Act is an excise tax on produced domestic taxable crude oil. Plaintiff Taxpayers seek to obtain a refund of the special excise taxes that have been illegally imposed on the domestic taxable crude oil of domestic oil producers and that have been illegally collected under the Act. The Association plaintiffs seek only to represent their members in helping to obtain an adjudication that Title I of the Act is unconstitutional.

II. Jurisdiction

2. The jurisdiction of this Court is invoked under 28 U.S.C. § 1331(a) providing for original jurisdiction in the District Court of the United States over any suits arising under the Constitution and the laws of the United States of America. The jurisdiction of this Court is also invoked under the provisions of 28 U.S.C. § 1346(a)(1); the Federal Mandamus Statute (Public Law 87-749, 76 Stat. 744; 28 U.S.C. § 1361 *et. seq.*); Article I, Section 8, Clause 1 of the United States Constitution, and Amendment V of the United States Constitution.

III. Venue

3. This action is properly brought in this judicial district under the venue provisions of 28 U.S.C. § 1391(e) and 28 U.S.C. § 1402(a).

IV. Parties

4. Plaintiff, Independent Petroleum Association of America (IPAA) is a national organization of independent domestic oil producers. Members of the IPAA have had a special excise tax imposed on a portion of their domestic taxable crude oil under the Act, and those members have paid that special excise tax. The members of the IPAA also are consumers of petroleum products, some of which are prepared from domestic crude oil subject to the tax under the Act. IPAA is dedicated to representing the common interests of its members before governmental authorities and other entities concerned with oil and gas related issues.

5. Plaintiffs, American Association of Petroleum Landmen, Association of Oilwell Servicing Contractors, Eastern Kansas Oil and Gas Association, Liaison Committee of Cooperating Oil and Gas Association, Arkoma Basin Independent Gas Producers Association, California Independent Producers Association, Illinois Oil and Gas Association, Indiana Oil and Gas Association, Independent Oil and Gas Association of West Virginia, Independent Petroleum Association of Mountain States, Kansas Independent Oil and Gas Association, Louisiana Landowners Association, Inc., Michigan Oil and Gas Association, New York State Oil Producers Association, Independent Oil Producers Tri-State, Inc., Independent Petroleum Association of New Mexico, Kentucky Oil and Gas Association, Louisiana Association of Independent Producers and Royalty Owners, National Stripper Well Association, North Texas Oil and Gas Association, Ohio Oil and Gas Association, Panhandle Producers and Royalty Owners Association, Pennsylvania Oil and Gas Association, Tennessee Oil and Gas Association, Virginia Oil and Gas Association, Oklahoma Independent Petroleum Association, Pennsylvania Grade Crude Oil Association, Permian Basin Petroleum Association, Texas Independent Producers and Royalty Owners Association, and West Central Texas Oil and Gas Association are all national, state or regional associations of individuals and companies which are explorers-producers of crude oil or are royalty owners of crude oil. The individual members of these organizations

have paid and, in the future will be required to pay, the tax under the Act. These organizations, together with IPAA, represent essentially all of the some 12,000 independent explorers-producers of crude oil and natural gas and several thousand royalty owners in the United States. The combined membership of these organizations account for approximately 90% of the wildcat exploratory drilling in the United States and drill 80% of all wells in the United States and have discovered more than 50% of the known crude oil and natural gas reserves in the United States.

6. Plaintiff, Harry Ptasynski, is a citizen of the State of Wyoming. Plaintiff Ptasynski is an independent domestic oil producer and a member of IPAA. Plaintiff Ptasynski has had a special excise tax imposed on a portion of his domestic taxable crude oil under the Act. Each purchaser of production from this plaintiff has withheld from payments for domestic taxable crude oil the tax under the Act for all taxable periods since March 1, 1980. Plaintiff Ptasynski is a consumer of petroleum products, some of which are prepared from domestic crude oil subject to the tax under the Act. Plaintiff Ptasynski filed an appropriate claim for refund (Form 843) with the District Director of the United States Internal Revenue Service Office at Cheyenne, Wyoming on or about October 17, 1980 in accordance with instructions by such Director to counsel for plaintiff. A copy of this claim for refund is attached hereto as Exhibit "A". This claim for refund was rejected and disallowed. A copy of the rejection is attached as Exhibit "B".

7. Plaintiff, John Partridge, is a citizen of the State of Wyoming. Plaintiff Partridge is an independent domestic oil producer and a member of IPAA. Plaintiff Partridge has had a special excise tax imposed on a portion of his domestic taxable crude oil under the Act. Each purchaser of production from this plaintiff has withheld from payments for crude oil the tax under the Act for all taxable periods since March 1, 1980. Plaintiff Partridge is a consumer of petroleum products, some of which are prepared for domestic crude oil subject to the tax under the Act. Plaintiff Partridge filed an appropriate claim for refund (Form 843) with the District Director of the United States Internal Revenue

Service Office at Cheyenne, Wyoming on or about October 29, 1980 in accordance with instructions by such director to counsel for plaintiff. A copy of this claim for refund is attached hereto as Exhibit "C". This claim for refund was rejected and disallowed on December 3, 1980. A copy of the rejection is attached as Exhibit "D".

8. Plaintiffs, Berton W. Avery and Goldie Avery, husband and wife, are citizens of the State of Wyoming. Plaintiffs Avery are royalty owners who have had taxes withheld from their royalty payments because the taxes have been imposed on domestic taxable crude oil and withheld from royalty payments for crude oil by purchasers of domestic taxable crude oil under the Act. Plaintiffs Avery are consumers of petroleum products, some of which are prepared from domestic crude oil subject to the tax under the Act. On or about October 17, 1980, Plaintiffs Avery filed a claim for refund (Form 843) with Michael J. Kelly, District Director of the United States Internal Revenue Service Office at Cheyenne, Wyoming. Prior to the filing of said claim for refund, Mr. Michael J. Kelly, District Director of the Internal Revenue Service at Cheyenne, Wyoming, represented to counsel for plaintiffs that each such claim for refund filed with his office would be processed through the Ogden, Utah office of the Internal Revenue Service and would be disallowed by said District Director within approximately three weeks after filing. A copy of this claim for refund is attached hereto as Exhibit "E". This claim for refund is pending and has not been acted upon in over eight months.

9. Plaintiff, Frederick S. Johnson, is a citizen of the State of Wyoming and a member of IPAA. Plaintiff Johnson is a royalty owner who has had taxes withheld from his royalty payments because the taxes have been imposed on domestic taxable crude oil and withheld from royalty payments for crude oil by purchasers of domestic taxable crude oil under the Act. Plaintiff Johnson is a consumer of petroleum products, some of which are prepared from domestic crude oil subject to the tax under the Act. Plaintiff Johnson filed an appropriate claim for refund (Form 843) with the Director of the United States Internal

Revenue Service Office at Cheyenne, Wyoming on or about October 17, 1981. The allegation concerning Michael J. Kelly's representation to counsel for plaintiffs in paragraph 8 above is incorporated herein by reference. A copy of this claim for refund is attached hereto as Exhibit "F". This claim for refund is pending and has not been acted upon in over eight months.

10. Plaintiff, Calvin Petroleum Corporation ("Calvin"), is both a royalty owner and an independent domestic oil producer. Plaintiff Calvin is a member of IPAA. Plaintiff Calvin is the holder of economic interests in domestic taxable crude oil which has been and is being produced in the State of Wyoming and other states. Plaintiff Calvin has had a special excise tax imposed under the Act on a portion of its domestic taxable crude oil. Each purchaser of production from this plaintiff has withheld from payments for domestic taxable crude oil the tax under the Act for all taxable periods since March 1, 1980. On August 26, 1980, Plaintiff Calvin filed an appropriate claim for refund (Form 843) with the Director of the United States Internal Revenue Service Office at Ogden, Utah. A copy of this claim for refund is attached hereto as Exhibit "G". This claim for refund is pending without action although filed over nine months ago.

11. In each of the instances alleged in paragraphs 6 through 10 above, the first purchaser of such domestic taxable crude oil, pursuant to the mandate of the Act, has deducted and withheld payment from the owners of said crude oil for that portion of said crude oil equal to the calculated or estimated amount of the tax for payment over to the United States of America and, on information and belief, has paid into the Treasury of the United States of America all such sums withheld in accordance with the requirements of the Act, all without any consent or approval by any of the plaintiffs herein.

12. Defendant is the United States of America.

V. Public Law 96-223

13. The Act (P.L. 96-223) imposes, effective March 1, 1980, a tax on all domestic taxable crude oil produced after

February 29, 1980. Although called a tax on profits, the tax is a temporary excise on produced domestic taxable crude oil, imposed when the crude oil is removed from the premises. The tax is imposed on the holder of the economic interest in the oil, called the "producer" under the Act. Primary collection responsibility, however, is on the first purchaser of the crude oil. Domestically produced crude oil is subject to this excise tax unless it is specifically exempted by the Act. The Act provides for five different categories of exemptions, which are determined either on the basis of ownership classification or the location of the wells from which the oil is produced.

14. Under § 101(a)(1) of the Act, the taxable period of March 1, 1980 to March 31, 1980, is designated as a separate and complete taxable period [26 U.S.C. § 4996(b)(7)(a)]. Each calendar quarter beginning after March 31, 1980, is a separate and complete taxable period under the Act.

VI. The Act is Unconstitutional

15. One of the exemptions granted under the Act is on the basis of where the oil is located. The Act excludes certain Alaskan oil from the operation of the tax. [26 U.S.C. § 4991(b)(1)].

16. Section 101(a)(1) of the Act [26 U.S.C. § 4994(e)] defines exempt Alaskan oil as any crude oil (other than Sadlerochit oil) which is produced:

"(1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or

"(2) from a well located on the northly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System."

17. The United States Constitution, Article I, Section 8, Clause 1 provides:

"The Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; *but all* Duties, Imposts and

Excises shall be uniform throughout the United States." (Emphasis Added.)

This Constitutional requirement means that excise taxes must be levied uniformly on a geographical basis.

18. Section 101(a)(1) of the Act [26 U.S.C. § 4986(a)] classifies the tax as an excise.

19. Because the tax is not levied uniformly throughout the United States, it violates Article I, Section 8, Clause 1 of the United States Constitution.

20. This lack of uniformity results in unwarranted discrimination against those persons upon whose domestic taxable crude oil the tax is levied.

21. Congress designed the tax to raise \$227.3 billion in tax revenues over the period the tax is in effect. Because the tax burden is not evenly distributed, the plaintiffs herein and other non-exempt producers of domestic taxable crude oil must bear a disproportionate amount of the \$227.3 billion tax burden created by the Act.

22. The legislative history of the Act demonstrates that the proper remedy for this unconstitutional situation is invalidation of the tax. Extension of the tax to those areas of Alaska not covered by the tax would significantly interfere with the announced goals of energy independence and increased petroleum availability.

23. As clearly appears from its legislative history, the Act was enacted for the stated purposes of reducing the dependence of the United States of America on foreign oil and encouraging domestic production of oil. In reality the Act will have the opposite effect and will increase the dependence of the United States of America on foreign oil and will actually decrease domestic production of oil.

24. Although the purpose of the Act as appears from its legislative history may be reasonable, its application and effect are wholly unreasonable and unlawful. The Act, therefore, violates the due process clause of Amendment V of the United States Constitution.

25. Because there is no rational relationship between said purposes of the Act and the actual application and effect of the Act, it violates the due process clause of Amendment V of the United States Constitution.

26. There is no rational basis for distinguishing between the domestic taxable crude oil subject to the tax and property other than such domestic taxable crude oil. The Act results in an unwarranted discrimination against those owners and producers of domestic taxable crude oil who are subject to the tax, including plaintiffs, and thus it violates the plaintiffs' rights of due process.

27. The tax cannot be justified as an attempt to reclaim high prices caused by the actions of members of the Organization of Petroleum Exporting Countries (OPEC) because the tax only increases the power of OPEC by decreasing domestic production of crude oil. The means and effect of the Act are not reasonably related to the purposes for which it was enacted, namely, increasing the energy independence of the United States of America. Therefore, the Act violates plaintiffs' rights of due process of law guaranteed by Amendment V to the United States Constitution.

28. The tax imposed by the Act has resulted in the taking of the property of plaintiffs for public use without just compensation contrary to the United States Constitution, Amendment V, which prohibits the taking of private property for public use without just compensation.

29. The total number of persons and entities who are not exempt from imposition of the tax consists of approximately 12,000 producers and 2½ million royalty owners which number comprises approximately one percent of the population of the United States of America. The United States Constitution, Amendment V, guarantees the political protection of minorities from the tyranny of the majority. It prevents the arbitrary seizure of the property of minorities to serve the purposes of the majority.

30. The persons paying the tax under the Act are not compensated for the taking of their property either in a concrete form, or by sharing equally in the benefits of the tax. The burden of the tax falls heavily upon a small minority while the benefits of the tax are directed toward other segments of society (Section 102 of the Act).

31. The property of said minority is taken under the Act for the benefit of the majority, in total disregard of the po-

litical protections inherent in the concept of private property.

32. The discriminatory seizure of the private property of minorities for the benefit of the majority is exactly the evil that the United States Constitution sought to prohibit when it forbade the taking of private property for public use without just compensation. The Act directly contravenes this constitutional principle and thus should be declared unconstitutional.

33. The ultimate effect of the Act undermines the purported objective of achieving energy independence by the United States of America. Such ultimate effect imposes harm upon the American consumer and interferes with the private property protections necessary for the preservation of a free society.

WHEREFORE, plaintiffs respectfully pray and request:

1. That this Court adjudge, declare and decree that the Act is unconstitutional.

2. That this Court grant plaintiffs such other and further relief as may be just and proper in the premises.

COUNT TWO

Count Seeking Refund of Excise Taxes Illegally Assessed and Collected

34. Plaintiffs refer to and by this reference adopt and reallege all of the allegations contained in Count One, with like effect as if fully repeated at length herein.

35. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1346(a)(1).

36. Taxpayer plaintiffs seek to obtain a refund of all excise taxes illegally assessed and collected under the Act where their respective refund claims have been rejected or have been filed more than six months with the Internal Revenue Service without action.

WHEREFORE, plaintiffs respectfully pray and request:

1. That this Court adjudge that the excise tax under the Act was erroneously and improperly assessed by the defendant and collected from the taxpayer plaintiffs.

2. That this Court enter an order directing and commanding the defendant to refund to each of the taxpayer

plaintiffs all payments, with interest, illegally and improperly assessed by defendant and paid by such plaintiffs under the Act.

3. That this court enter an order directing and commanding defendant to take no further action which would result in the assessment and collection of this special excise tax on the domestic taxable crude oil of domestic oil producers under the Act.

4. That this Court grant plaintiffs such other and further relief as may be just and proper.

This Second Amended and Supplemental Complaint is dated this 29th day of June, 1981.

OF COUNSEL:

STEPHEN F. WILLIAMS
Professor of Law
University of Colorado
School of Law
Campus Box 410
Boulder Co. 80309

HAROLD B. SCOGGINS, JR.
Independent Petroleum
Association of America
1101 16th Street, N.W.
Washington, D.C. 20036
(202) 957-4731

and

BROWN, DREW, APOSTOLOS,
MASSEY & SULLIVAN
500 Petroleum Building
Casper, WY 82601

By _____
WM. H. BROWN

and _____
MICHAEL J. SULLIVAN
Counsel for Plaintiffs

Form **843**
(Rev. June 1978)
Department of the Treasury
Internal Revenue Service

Claim

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Name of taxpayer or purchaser of stamps	Name of taxpayer or purchaser of stamps
	<u>Harry and Nola Grace Plasynski</u>
	Number and street
	<u>P.O. Box 43</u>
City or town, State, and ZIP code	<u>Casper, Wyoming 82502</u>

Fill in applicable items—Use attachments if necessary

1 Your social security number	<u>Harry Plasynski 397-1875</u>	2 Employer identification number	<u>Nola Grace Plasynski 441-20-3944</u>
3 Internal Revenue Service office where return (if any) was filed	<u>Ogden, Utah 84201</u>		
4 Name and address shown on return, if different from above			

5 Period—prepare separate form for each taxable period	6 Amount to be refunded or abated
From <u>2/29/</u> , 19 <u>80</u> , to <u>3/31/</u> , 19 <u>80</u>	<u>\$3,696.44</u>

7 Dates of payment	<u>Various Dates during April, 1980</u>
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8 Type of tax	<input type="checkbox"/> Employment	<input type="checkbox"/> Estate	<input checked="" type="checkbox"/> Excise	<input type="checkbox"/> Gift	<input type="checkbox"/> Stamp	<input type="checkbox"/> Windfall Profits		
9 Kind of return filed	<input type="checkbox"/> 706	<input type="checkbox"/> 709	<input type="checkbox"/> 720	<input type="checkbox"/> 940	<input type="checkbox"/> 941	<input type="checkbox"/> 990-PF	<input type="checkbox"/> 4720	<input checked="" type="checkbox"/> Other (specify) <u>Windfall Profits</u>

10 Explain why you believe this claim should be allowed and show computation of tax refund or abatement.

See attached explanation

Under penalty of perjury, I declare that I have examined this claim, including accompanying schedules and state tables, and to the best of my knowledge and belief it is true, correct, and complete.

Signed [Signature] Date September 30, 1980

Director's Stamp
(Date received)

For Internal Revenue Service Use Only

- ☐ Refund of taxes imposed, erroneously, or excessively collected.
☐ Refund of amount paid for stamps unused, or used in error or excess.
☐ Abatement of tax assessed (not applicable to estate or gift taxes).

See instructions on back.
EXHIBIT A

Form 843 (Rev. 6-78)

CLAIM
Item 10, Form 843

The taxpayer seeks a refund of all taxes paid by him pursuant to the Crude Oil Windfall Profit Tax, as set forth in Chapter 45 of the Internal Revenue Code, imposed by Public Law 96-223 on producers of certain domestic crude oil.

The taxpayer has paid the tax for which refund is sought, which is imposed by section 4986 of the Internal Revenue Code, and which is withheld and paid under section 4995.

The statute is unconstitutional in its entirety. In particular, the Windfall Profit Tax is unconstitutional in the following respects:

1. It constitutes a taking of private property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

2. It establishes an unwarranted and irrational discrimination between the taxation of oil and of all other forms of income, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

3. It is an arbitrary and irrational tax utterly unable to advance the purposes which it allegedly serves, in violation of the Fifth Amendment to the United States Constitution.

4. If in fact it is an excise tax, it is an unconstitutional excise tax as it is not uniform throughout the United States, as required by Article 1, Section 8, Clause 1, of the United States Constitution.

The tax, in its entirety, is unconstitutional. Therefore, all amounts collected from the taxpayer, together with interest thereon from the date of collection, should be refunded.

NOTE: The listing of constitutional challenges in this claim for refund should not be viewed as waiving any procedural, computational or other grounds for refund.

**INTERNAL REVENUE SERVICE CENTER
WESTERN REGION
DEPARTMENT OF THE TREASURY**

741088: cf

Social Security or Employer Identification Number: 83-0185088
Document Locator Number:

Kind of Tax: Windfall Profit Tax
Tax Period Ended: March 31, 1980
Amount Claimed: \$3,696.44
Date Claim Received: Oct. 22, 1980
Person to Contact: C. W. Christiansen
Contact Telephone Number: 801-626-3701 (not toll free)

**Harry & Nola Grace Ptasynski
PO Box 43
Casper, WY 82602**

Dear Mr. & Mrs. Ptasynski:

We are sorry, but we cannot allow your claim for an adjustment to your tax, for the reasons stated below. This letter is your legal notice that your claim is fully disallowed.

If you wish to bring suit or proceedings for the recovery of any tax, penalties, or other moneys for which this disallowance notice is issued, you may do so by filing such a suit with the United States District Court having jurisdiction, or the United States Court of Claims. The law permits you to do this within 2 years from the mailing date of this letter. However, if you signed a waiver of the notice of disallowance (Form 2297), the period for bringing suit began to run on the date the waiver was filed.

If you have any questions and wish to call us, the person whose name and telephone number are shown above will be able to help you. Since there will be a long-distance charge to you if you are beyond the immediate dialing area of the service center, you may prefer to write us at the address on this letter or call any Internal Revenue Service Office.

Sincerely yours,

By _____
Director, Service Center

Reasons for disallowance:

We are sorry, but we cannot allow your refund claim for \$3,696.44 for the tax period ended March 31, 1980. The

claim is based on your view that certain tax laws are unconstitutional; only the courts have authority to pass on such matters.

Letter 105(SC)(7-77)

EXHIBIT B

Claim

Form **645**
 (Rev. June 1976)
 Department of the Treasury
 Internal Revenue Service

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Name and address of taxpayer or purchaser of stamps	Name of taxpayer or purchaser of stamps JOHN PARTRIDGE, JR.
	Number and street BOX 2134
	City or town, State, and ZIP code CASPER, WYOMING 82602

Fill in applicable items—Use attachments if necessary

1 Your social security number 567-09-3575	2 Employer identification number N/A
3 Internal Revenue Service office where return (if any) was filed OGDEN, UTAH	
4 Name and address shown on return, if different from above SAHE	

5 Period—prepare separate form for each taxable period From 2/29 , 19 80 , to 9/30 , 19 80	6 Amount to be refunded or abated \$1135.30
7 Dates of payment VARIOUS DATES DURING ABOVE PERIOD	

8 Type of tax <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Excise <input type="checkbox"/> Gift <input type="checkbox"/> Stamp WINDFALL PROFITS
9 Kind of return filed <input type="checkbox"/> 706 <input type="checkbox"/> 709 <input type="checkbox"/> 720 <input type="checkbox"/> 940 <input type="checkbox"/> 941 <input type="checkbox"/> 990-PF <input type="checkbox"/> 4720 <input checked="" type="checkbox"/> Other (specify) WINDFALL PROFITS
10 Explain why you believe this claim should be allowed and show computation of tax refund or abatement.

See attached explanation, Form Claim Item 10, 843

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.	Director's Stamp (Date received)
Signed <u><i>J. H. Partridge, Jr.</i></u> Dated <u>10/17</u> 19 <u>80</u>	
For Internal Revenue Service Use Only	
<input type="checkbox"/> Refund of taxes illegally, erroneously, or excessively collected. <input type="checkbox"/> Refund of amount paid for stamps unused, or used in error or excess. <input type="checkbox"/> Abatement of tax assessed (not applicable to estate or gift taxes).	

See instructions on back.
EXHIBIT C

Form 845 (Rev. 6-76)

CLAIM**Item 10, Form 83**

The taxpayer seeks a refund of all taxes paid by him pursuant to the Crude Oil Windfall Profit Tax, as set forth in Chapter 45 of the Internal Revenue Code, imposed by Public Law 93-223 on producers of certain domestic crude oil.

The taxpayer has paid the tax for which refund is sought, which is imposed by section 4986 of the Internal Revenue Code, and which is withheld and paid under section 4995.

The statute is unconstitutional in its entirety. In particular, the Windfall Profit Tax is unconstitutional in the following respects:

1. It constitutes a taking of private property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

2. It establishes an unwarranted and irrational discrimination between the taxation of oil and of all other forms of income, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

3. It is an arbitrary and irrational tax utterly unable to advance the purposes which it allegedly serves, in violation of the Fifth Amendment to the United States Constitution.

4. If in fact it is an excise tax, it is an unconstitutional excise tax as it is not uniform throughout the United States, as required by Article 1, Section 8, Clause 1, of the United States Constitution.

The tax, in its entirety, is unconstitutional. Therefore, all amounts collected from the taxpayer, together with interest thereon from the date of collection, should be refunded.

NOTE: The listing of constitutional challenges in this claim for refund should not be viewed as waiving any procedural, computational or other grounds for refund.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OGDEN, UT 84201

In reply refer to: 29740125

Dec. 03, 1980 LTR 105C 8222 567-09-3575

Michael J. Sullivan & William H. Brown WP2287R
Brown Drew Apostolos Massey & Sullivan
500 Protroleum Bldg
Casper, WY 82601

Social Security Number: 567-09-3575

Kind of Tax: Windfall Profit

Amount of Claim: \$1,135.30

Date Claim Received: Nov. 3, 1980

Dear Taxpayers:

We are sorry, but we cannot allow your claim for an adjustment to your tax for the period ended Sept. 30, 1980. This letter is your legal notice that your claim is fully disallowed.

We have disallowed the claim because the claim is based on your view that certain tax laws are unconstitutional, only the courts have authority to pass on such matters.

Reference John Partridge Junior

If you wish to bring suit or proceedings for the recovery of any tax, penalties or other moneys for which this disallowance notice is issued, you may do so by filing such a suit with the United States District Court having jurisdiction, or the United States Court of Claims. The law permits you to do this within 2 years from the mailing date of this letter. However, if you signed a waiver of the notice of disallowance (Form 2297), the period for bringing suit began to run on the date the waiver was filed.

EXHIBIT D

Form **843**
(Rev. June 1978)
Department of the Treasury
Internal Revenue Service

Claim

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Name of taxpayer or purchaser of stamps *Burton W. Avery - Hallie Avery*
Number and street *P.O. Box 71*
City or town, State, and ZIP code *Laporte, Utah*

Fill in applicable items—Use attachments if necessary

1 Your social security number *520-36-9605* *520-36-0222* 2 Employer identification number *None*
3 Internal Revenue Service office where return (if any) was filed
Ogden, Utah
4 Name and address shown on return, if different from above

5 Period—prepare separate form for each taxable period
From *March 1, 1980* to *March 31, 1980* 6 Amount to be refunded or abated
7 Date of payment *March 31, 1980* *\$1240.34*

8 Type of tax
☐ Employment ☐ Estate ☒ Excise ☐ Gift ☐ Stamp
9 Kind of return filed
☐ 706 ☐ 709 ☐ 720 ☐ 940 ☐ 941 ☐ 990-PF ☐ 4720 ☒ Other (specify) *Windfall profits tax*
10 Explain why you believe this claim should be allowed and show computation of tax refund or abatement.

*The Windfall Profits tax is going to put all the
all folks who have royalty on oil either in the Pool
house or on wellbore. It is the most ludicrous thing
that has happened in this Country.*

(See Attachment)

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Director's Stamp
(Date received)

Signed *Burton W. Avery* Date *Aug 26th 1980*

For Internal Revenue Service Use Only

- ☐ Refund of taxes illegally, erroneously, or excessively collected.
☐ Refund of amount paid for stamps unused, or used in error or excess.
☐ Abatement of tax assessed (not applicable to estate or gift taxes).

See instructions on back.

EXHIBIT F

Form 843 (Rev. 6-78)

CLAIM
Item 10, Form 843

The taxpayer seeks a refund of all taxes paid by him pursuant to the Crude Oil Windfall Profit Tax, as set forth in Chapter 45 of the Internal Revenue Code, imposed by Public Law 96-223 on producers of certain domestic crude oil.

The taxpayer has paid the tax for which refund is sought, which is imposed by section 4986 of the Internal Revenue Code, and which is withheld and paid under section 4995.

The statute is unconstitutional in its entirety. In particular, the Windfall Profit Tax is unconstitutional in the following respects:

1. It constitutes a taking of private property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

2. It establishes an unwarranted and irrational discrimination between the taxation of oil and of all other forms of income, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

3. It is an arbitrary and irrational tax utterly unable to advance the purposes which it allegedly serves, in violation of the Fifth Amendment to the United States Constitution.

4. If in fact it is an excise tax, it is an unconstitutional excise tax as it is not uniform throughout the United States, as required by Article 1, Section 8, Clause 1, of the United States Constitution.

The tax, in its entirety, is unconstitutional. Therefore, all amounts collected from the taxpayer, together with interest thereon from the date of collection, should be refunded.

NOTE: The listing of constitutional challenges in this claim for refund should not be viewed as waiving any procedural, computational or other grounds for refund.

Form **843**
 (Rev. June 1972)
 Department of the Treasury
 Internal Revenue Service

Claim

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Name of taxpayer or purchaser of stamps
Fernando S. Johnson

Number and street
P.O. Box 232

City or town, State, and ZIP code
Orlando, FL 32602

Fill in applicable items—Use attachments if necessary.

1 Your social security number
230-22-9076

2 Employer identification number
83-6015551

3 Internal Revenue Service office where return (if any) was filed
Ogden, Utah

4 Name and address shown on return, if different from above

5 Period—prepare separate form for each taxable period
 From March 1, 1980 to March 31, 1980

6 Amount to be refunded or abated
\$ 73.30

7 Dates of payment
March 31, 1980

8 Type of tax
☐ Employment ☐ Estate ☒ Excise ☐ Gift ☐ Stamp

9 Kind of return filed
☐ 706 ☐ 709 ☐ 720 ☐ 940 ☐ 941 ☐ 990-PF ☐ 4720 ☒ Windfall profits tax

10 Explain why you believe this claim should be allowed and show computation of tax refund or abatement.

(See Attachment)

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Director's Stamp
 (Date received)

Signed Fernando S. Johnson Dated Aug 27, 1980

For Internal Revenue Service Use Only

- ☐ Refund of taxes illegally, erroneously, or excessively collected.
☐ Refund of amount paid for stamps unused, or used in error or excess.
☐ Abatement of tax assessed (not applicable to estate or gift taxes).

See instructions on back.

EXHIBIT F

Form 843 (Rev. 6-78)

CLAIM
Item 10, Form 843

The taxpayer seeks a refund of all taxes paid by him pursuant to the Crude Oil Windfall Profit Tax, as set forth in Chapter 45 of the Internal Revenue Code, imposed by Public Law 96-223 on producers of certain domestic crude oil.

The taxpayer has paid the tax for which refund is sought, which is imposed by section 4986 of the Internal Revenue Code, and which is withheld and paid under section 4995.

The statute is unconstitutional in its entirety. In particular, the Windfall Profit Tax is unconstitutional in the following respects:

1. It constitutes a taking of private property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

2. It establishes an unwarranted and irrational discrimination between the taxation of oil and of all other forms of income, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

3. It is an arbitrary and irrational tax utterly unable to advance the purposes which it allegedly serves, in violation of the Fifth Amendment to the United States Constitution.

4. If in fact it is an excise tax, it is an unconstitutional excise tax as it is not uniform throughout the United States, as required by Article 1, Section 8, Clause 1, of the United States Constitution.

The tax, in its entirety, is unconstitutional. Therefore, all amounts collected from the taxpayer, together with interest thereon from the date of collection, should be refunded.

NOTE: The listing of constitutional challenges in this claim for refund should not be viewed as waiving any procedural, computational or other grounds for refund.

Claim

143

Rev. 2-78 1071
Department of Treasury
Internal Revenue Service

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Name of taxpayer or purchaser of stamps
CALVIN PETROLEUM CORPORATION
Number and street
2950 Security Life Building, 1616 Glenarm Place
City or town, State, and ZIP code
Denver, Colorado 80202

Fill in applicable items—Use attachments if necessary

1 Your social security number **525-38-4039 (Rodney P. Calvin)** 2 Employer identification number **84-0726436**

3 Internal Revenue Service office where return (if any) was filed

Ogden, Utah 84201

4 Name and address shown on return, if different from above

5 Period—prepare separate form for each taxable period
From **2/29/** , 19 **80** , to **3/31/** , 19 **80** 6 Amount to be refunded or stated **\$ 34,939.78**

7 Dates of payment **Various dates during April, 1980**

8 Type of tax
☒ Employment ☐ Estate ☒ Excise ☐ Gift ☐ Stamp ☐ Windfall Profits
9 Kind of return filed
☒ 706 ☐ 709 ☐ 720 ☐ 940 ☐ 941 ☐ 990-PF ☐ 4720 ☐ Other (specify) **1- Profit**

10 Explain why you believe this claim should be allowed and show computation of tax refund or abatement.

The Windfall Profit Tax is an unconstitutional tax and therefore, the entire tax paid should be refunded. Specifically, the tax violates due process, takes private property without just compensation, and is irrational and discriminatory. In addition, the tax does not meet the constitutional requirement of geographic uniformity. Calvin Petroleum Corporation reserves the right to raise additional grounds for recovering the Windfall Profit Tax amounts paid. **THIS AMOUNT OF MONEY, IF PROJECTED FOR ONE YEAR, IS SUFFICIENT FOR CLAIMANT TO DRILL FOUR (4) EXPLORATORY WELLS TO AN AVERAGE DEPTH OF 4,500'.**

Before preparing this form, I declare that I have examined the claim, including supporting schedules and attachments, and that the information shown is true and correct to the best of my knowledge and belief.

Rodney P. Calvin
Rodney P. Calvin, President
For Internal Revenue Service Use Only

- 11 Refund of tax paid, including interest, if any, to be refunded.
12 Refund of tax paid, including interest, if any, to be refunded.
13 Refund of tax paid, including interest, if any, to be refunded.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-302K

Filed July 2, 1981

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, ET
AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

**ORDER GRANTING
MOTIONS TO INTERVENE**

The above-entitled matter coming on regularly for hearing before the Court upon the Motions to Intervene filed by the States of Texas and Louisiana, the State of Texas appearing by and through its attorneys, Mark White, Attorney General for the State of Texas, and Stewart Fryer, Assistant Attorney General for the State of Texas, and the State of Louisiana appearing by and through its attorney, George Domas, and both states appearing by and through Roger Marzulla, Gale Norton and David Kennedy, and the defendants appearing by and through their attorneys, Robert Baker and Jeffrey Fisher, and the Court having heard the arguments of counsel in support of and in opposition to said Motions, and the Court having carefully considered the pleadings and the memoranda briefs submitted by counsel, and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED that the Motions to Intervene filed by and on behalf of the States of Texas and Louisiana be and the same are hereby granted.

Dated this 2nd day of July, 1981.

/s/ **EWING T. KERR**

U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-302K

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT.

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

The above-entitled matter coming on regularly for hearing before the Court upon the Motion filed by the United States of America to dismiss the Complaint of plaintiffs, and plaintiffs appearing by and through their attorneys, William H. Brown, Stephen F. Williams and Harold B. Scoggins, Jr., and defendant appearing by and through its attorneys, Robert Bauer and Jeffrey Fisher, and the Court having allowed the filing of plaintiffs' Second Amended and Supplemental Complaint, and the Court having heard the arguments of counsel in support of and in opposition to the Motion to Dismiss as it may apply to the Second Amended and Supplemental Complaint, and having carefully considered the pleadings relating thereto and the memoranda briefs submitted by counsel, and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED that the Motion to Dismiss filed by and on behalf of the defendant is denied as to plaintiffs Partridge, Ptasynski, Avery, Johnson and Calvin Petroleum; it is

FURTHER ORDERED that defendants be given thirty (30) days from the date of this Order within which time to answer or otherwise plead; it is

FURTHER ORDERED that the Motion of defendant to dismiss as to the remaining plaintiffs is granted, provided that such plaintiffs shall remain parties to the action as permissive intervenors, as their interests may appear without further pleading on their part and in all subsequent plead-

ings herein such parties shall be designated intervenors rather than plaintiffs.

Dated this 26th day of August, 1981.

/s/ EWING T. KERR

U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-0302

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

v.

STATE OF LOUISIANA, STATE OF TEXAS,
INTERVENORS-PLAINTIFFS

ANSWER

Comes now the defendant, United States of America, by and through its counsel of record, Richard A. Stacy, United States Attorney for the District of Wyoming, Robert L. Baker, Trial Attorney, Tax Division, Department of Justice, and for its answer to the Petition in Intervention of The State of Texas, Intervenor-Plaintiff, responds as follows:

Denies each and every allegation of such complaint not admitted, qualified or otherwise specifically referred to below.

Further answering, defendant says that it:

1. Admits the allegations contained in paragraph 1 of intervenor-plaintiff's complaint.
2. Denies the allegations contained in paragraph 2 of intervenor-plaintiff's complaint.
3. Denies the allegations contained in paragraph 3 of intervenor-plaintiff's complaint.
4. Denies the allegations contained in paragraph 4 of intervenor-plaintiff's complaint.
5. Admits the allegations contained in paragraph 5 of intervenor-plaintiff's complaint.
6. Admits that the State of Texas entered the Union on December 29, 1845, but lacks information or knowledge sufficient to form a belief as to the remaining allegations con-

tained in paragraph 6 of intervenor-plaintiff's complaint and, therefore, denies them.

7. Admits the allegations contained in paragraph 7 of intervenor-plaintiff's complaint.

8. Admits the allegations contained in paragraph 8 of intervenor-plaintiff's complaint.

9. Admits that one geographic exemption is found in 26 U.S.C. Sec. 4994(e).

10. Admits the allegations contained in paragraph 10 of the intervenor-plaintiff's complaint.

11. Denies the allegations contained in paragraph 11 of intervenor-plaintiff's complaint except admits that the legislative purpose of the Windfall Profit tax was, among others, to reduce dependence of the United States upon imported oil and to encourage production of oil.

12. Denies the allegations contained in paragraph 12 of intervenor-plaintiff's complaint.

13. Admits the allegations contained in paragraph 13 of intervenor-plaintiff's complaint.

14. Lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of intervenor-plaintiff's complaint, and, therefore, denies them.

15. Denies the allegations contained in paragraph 15 of the intervenor-plaintiff's complaint.

16. Lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of intervenor-plaintiff's complaint, and, therefore, denies them.

17. Denies the allegations contained in paragraph 17 of the intervenor-plaintiff's complaint.

18. Denies the allegations contained in paragraph 18 of the intervenor-plaintiff's complaint.

19. Denies the allegations contained in paragraph 19 of the intervenor-plaintiff's complaint.

20. Denies the allegations contained in paragraph 20 of the intervenor-plaintiff's complaint.

21. Denies the allegations contained in paragraph 21 of the intervenor-plaintiff's complaint.

22. Denies the allegations contained in paragraph 22 of the intervenor-plaintiff's complaint.

WHEREFORE, defendant prays that judgment be entered in favor of the United States, that intervenor-plaintiff's complaint be dismissed with prejudice and that this Court grant such other and additional relief as it deems proper.

RICHARD S. STACY
United States Attorney

OF COUNSEL:

/s/ Robert L. Baker

ROBERT L. BAKER
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530
724-6513

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-0302

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT,

v.

STATE OF LOUISIANA, STATE OF TEXAS,
INTERVENORS-PLAINTIFFS

ANSWER

Comes now the defendant, United States of America, by and through its counsel of record, Richard A. Stacy, United States Attorney for the District of Wyoming, Robert L. Baker, Trial Attorney, Tax Division, Department of Justice, and for its answer to the Petition in Intervention of The State of Louisiana, Intervenor-Plaintiff, responds as follows:

Denies each and every allegation of such complaint not admitted, qualified or otherwise specifically referred to below.

Further answering, defendant says that it:

1. Admits the allegations contained in paragraph 1 of intervenor-plaintiff's complaint, but denies the allegation that the Act is unconstitutional.
2. Denies the allegations contained in paragraph 2 of intervenor-plaintiff's complaint.
3. Admits the allegations contained in paragraph 3 of intervenor-plaintiff's complaint.
4. Lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of intervenor-plaintiff's complaint and, therefore, denies them.
5. Denies that plaintiffs Arch W. Deuel and William Edward Wolff filed claims for refunds with the Internal

Revenue Service or received notices of disallowances of those claims from the Internal Revenue Service. Admits that only the following plaintiffs filed claims for refund on the dates indicated:

<i>Plaintiff</i>	<i>Claim filed</i>	<i>Period of Claim</i>
(a) H. Ptasynski	10/22/80	2/29/80—3/31/80
(b) B & G. Avery	10/22/80	3/1/80—3/31/80
(c) F. Johnson	10/22/80	3/1/80—3/31/80
(d) J. Partridge, Jr.	11/3/80	2/29/80—9/30/80
(e) Calvin Petroleum Corporation	8/25/80	2/29/80—3/31/80

Further admits that the claims for refunds filed by plaintiffs H. Ptasynski and B. & G. Avery were disallowed by the Internal Revenue Service on November 13, 1980 and that the claim for refund filed by J. Partridge was disallowed by the Internal Revenue Service on December 3, 1980. Lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5 of intervenor-plaintiff's complaint and, therefore, denies them.

6. Admits the allegations contained in paragraph 6 of intervenor-plaintiff's complaint.

7. Admits that the intervenor-plaintiff is the State of Louisiana, but lacks information or knowledge sufficient to form a belief as to the remaining allegations in paragraph 7 of intervenor-plaintiff's complaint and, therefore, denies them.

8. Admits the allegations contained in paragraph 8 of intervenor-plaintiff's complaint except avers that 26 U.S.C. 4994(c) is also, in effect, a geographic exemption.

9. Admits the allegations contained in paragraph 9 of intervenor-plaintiff's complaint.

10. Admits the allegations contained in paragraph 10 of intervenor-plaintiff's complaint.

11. Admits the allegations contained in paragraph 21 of intervenor-plaintiff's complaint.

12. Admits that the Crude Oil Windfall Profit Tax is an excise tax, but denies the remaining allegations contained in paragraph 12 of intervenor-plaintiff's complaint.

13. Denies the allegations contained in paragraph 13 of intervenor-plaintiff's complaint.

14. Admits the allegations contained in the first sentence of paragraph 14 of intervenor-plaintiff's complaint, but denies the allegations contained in the second sentence of paragraph 14.

15. Admits the allegations contained in paragraph 15 of intervenor-plaintiff's complaint.

16. Denies the allegations contained in paragraph 16 of intervenor-plaintiff's complaint.

17. Denies the allegations contained in paragraph 17 of intervenor-plaintiff's complaint.

18. Denies the allegations contained in paragraph 18 of intervenor-plaintiff's complaint.

WHEREFORE, defendant prays that judgment be entered in favor of the United States, that intervenor-plaintiff's complaint be dismissed with prejudice and that this Court grant such other and additional relief as it deems proper.

RICHARD S. STACY
United States Attorney

OF COUNSEL:

/s/ Robert L. Baker

ROBERT L. BAKER
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530
724-6513

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-0302

JOHN PARTRIDGE, HARRY PTASYSKI, BERTON W. AVERY,
GOLDIE AVERY, FREDERICK S. JOHNSON AND CALVIN
PETROLEUM, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

v.

STATE OF TEXAS, STATE OF LOUISIANA, INDEPENDENT
PETROLEUM ASSOCIATION OF AMERICA, ET AL.,
INTERVENORS

ANSWER

Comes now the defendant, United States of America, by and through its counsel of record, Richard A. Stacy, United States Attorney for the District of Wyoming, Robert L. Baker, Trial Attorney, Tax Division, Department of Justice, and for its answer to the Plaintiffs' Second Amended and Supplemental Complaint ("Complaint") responds as follows:

Denies each and every allegation of such complaint not admitted, qualified or otherwise specifically referred to below.

Further answering, defendant says that it:

COUNT ONE

1. Admits the allegations set forth in the first two sentences of paragraph 1 of plaintiffs' complaint, but denies any averments that may be contained in the remaining allegations in paragraph 1.

2. Denies the allegations contained in paragraph 2 of plaintiffs complaint.

3. Admits the allegations contained in paragraph 3 of plaintiffs' complaint.

4. Lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 4 of the plaintiff's complaint, and, therefore, denies them.

5. Lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 5 of plaintiffs' complaint, and, therefore, denies them.

6. Admits that plaintiff, Harry Ptasynski, is a citizen of the State of Wyoming and is an independent oil producer; that he has had an excise tax imposed on a portion of his domestic taxable crude oil under the Act and that one or more purchasers of production from this plaintiff has withheld from payments for domestic taxable crude oil the tax under the Act for the taxable period ending March 31, 1980; that on October 22, 1980, Ptasynski filed a claim for refund (Form 843) with the Internal Revenue Service which was disallowed on November 13, 1980; that defendant lacks information or knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 6 of plaintiffs' complaint, and, therefore, denies them.

7. Admits that plaintiff, John Partridge, is a citizen of the State of Wyoming and is an independent oil producer; that he has had an excise tax imposed on a portion of his domestic taxable crude oil under the Act and one or more purchasers of production from this plaintiff has withheld from payments for domestic taxable crude oil the tax under the Act for the taxable period ending March 31, 1980; that on November 3, 1980, Partridge filed a claim for refund (Form 843) with the Internal Revenue Service which was disallowed on December 3, 1980; that defendant lacks information or knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 7 of plaintiffs' complaint, and, therefore, denies them.

8. Admits that plaintiffs, Berton W. Avery and Goldie Avery, are citizens of the State of Wyoming and are royalty owners who have had excise taxes withheld from their royalty payments under the Act for the taxable period ending March 31, 1980; that on October 22, 1980, Berton W. and Goldie Avery filed a claim for refund (Form 843) with the Internal Revenue Service which was disallowed on November 13, 1981; that defendant lacks information or knowledge

sufficient to form a belief as to the remaining allegations contained in paragraph 6 of plaintiffs' complaint, and, therefore, denies them.

9. Admits that plaintiff, Frederick S. Johnson, is a citizen of the State of Wyoming and is royalty owner who has had excise taxes withheld from his royalty payments under the Act for the taxable period ending March 31, 1980; that on October 22, 1980, Johnson filed a claim for refund (Form 843) with the Internal Revenue Service which has not been acted upon by the Internal Revenue Service; that defendant lacks information or knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 9 of plaintiffs' complaint, and, therefore, denies them.

10. Admits that plaintiff, Calvin Petroleum Corp., is both a royalty owner and an independent domestic oil producer; that it has had an excise tax imposed on a portion of its domestic taxable crude oil under the Act and one or more purchasers of production from this plaintiff has withheld from payments for domestic taxable crude oil the tax under the Act for the taxable period ending March 31, 1980; that on August 25, 1980, Calvin filed a claim for refund (Form 843) with the Internal Revenue Service; that defendant lacks information or knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 10 of plaintiffs' complaint, and, therefore, denies them.

11. Except insofar as defendant admits in paragraphs 6 through 10, above, the allegations contained in paragraph 6 through 10 of plaintiffs' complaint, defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 11 of plaintiffs' complaint and, therefore, denies them.

12. Admits the allegations contained in paragraph 12 of plaintiffs' complaint.

13. Denies any averments that may be contained in the allegations set forth in paragraph 13 of plaintiffs' complaint.

14. Admits the allegations contained in paragraph 14 of plaintiffs' complaint.

15. Denies any averments that may be contained in the allegations set forth in paragraph 15 of plaintiffs' complaint.

16. Admits the allegations contained in paragraph 16 of plaintiffs' complaint.

17. Denies any averments that may be contained in paragraph 17 of plaintiffs' complaint and further states that the Constitution speaks for itself as to meaning and content.

18. Admits the allegations contained in paragraph 18 of plaintiffs' complaint.

19. Denies the allegations contained in paragraph 19 of plaintiffs' complaint.

20. Denies the allegations contained in paragraph 20 of plaintiffs' complaint.

21. Denies any averments that may be contained in the allegations set forth in paragraph 21 of plaintiffs' complaint.

22. Denies the allegations contained in paragraph 22 of plaintiffs' complaint.

23. Denies any averments that may be contained in the allegations set forth in paragraph 23 of plaintiffs' complaint.

24. Denies the allegations contained in paragraph 24 of plaintiffs' complaint.

25. Denies the allegations contained in paragraph 25 of plaintiffs' complaint.

26. Denies the allegations contained in paragraph 26 of plaintiffs' complaint.

27. Denies the allegations contained in paragraph 27 of plaintiffs' complaint.

28. Denies the allegations contained in paragraph 28 of plaintiffs' complaint.

29. Lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 29 of plaintiffs' complaint, and, therefore, denies them.

30. Denies the allegations contained in paragraph 30 of plaintiffs' complaint.

31. Denies the allegations contained in paragraph 31 of plaintiffs' complaint.

32. Denies the allegations contained in paragraph 32 of plaintiffs' complaint.

33. Denies the allegations contained in paragraph 33 of plaintiffs' complaint.

COUNT TWO

34. Defendant incorporates by references its responses to the allegations contained in Count One of plaintiffs' complaint.

35. Denies the allegations contained in paragraph 35 of plaintiffs' complaint.

36. Admits the allegations contained in paragraph 36 of plaintiffs' complaint except denies that the excise taxes assessed under the Act were illegally assessed or collected.

WHEREFORE, the defendant, United States of America, having answered plaintiffs' complaint, prays that judgment be entered in favor of the United States of America, that plaintiffs' complaint be dismissed with prejudice and that this Court grant such other and additional relief as it deems proper.

RICHARD A. STACY
United States Attorney

OF COUNSEL

/s/ Robert L. Baker

ROBERT L. BAKER
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-302K

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS-INTERVENORS

v.

UNITED STATES OF AMERICA, DEFENDANT

MOTION OF THE STATE OF LOUISIANA
FOR SUMMARY JUDGMENT

Plaintiff-in-intervention, the State of Louisiana, through its undersigned counsel, hereby moves the Court under the provisions of Rule 56 of the Federal Rules of Civil Procedure for the entry of a summary judgment in its favor and against defendant, The United States of America, on the ground that, as will appear from the pleadings on file herein, there is no genuine issue as to any material fact and plaintiff-in-intervention is entitled to judgment as a matter of law (1) declaring that Title I of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, violates the Uniformity Clause of the United States Constitution, Art. I, § 8, cl. 1, and is therefore unconstitutional, and (2) permanently enjoining and restraining the Commissioner of the Internal Revenue Service from enforcing, implementing, or taking any further action which results in the assessment or collection of the Windfall Profit Tax.

In support of it motion for summary judgment, the State of Louisiana attaches hereto and makes a part hereof its Statement of Material Facts As To Which There Is No Genuine Issue and its Memorandum In Support of Motion of the State of Louisiana For Summary Judgment.

Respectfully submitted,

LISKOW & LEWIS

/s/ Gene W. Lafitte

GENE W. LAFITTE

L. LINTON MORGAN

GEORGE J. DOMAS

DEBORAH BAHN PRICE

JOE B. NORMAN

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KENNEDY, CONNOR & HEALEY

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*Attorneys for the State of
Louisiana*

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF WYOMING

No. C80-0302

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS-INTERVENORS,

v.

UNITED STATES OF AMERICA, DEFENDANT,

**MOTION OF PLAINTIFFS PARTRIDGE, PTASYSKI,
AVERY AND CALVIN PETROLEUM
FOR SUMMARY JUDGMENT**

Plaintiffs above named through their undersigned counsel, hereby move the Court under the provisions of Rule 56 of the Federal Rules of Civil Procedure for the entry of a summary judgment in their favor and against defendant, The United States of America, on the grounds that there is no genuine issue as to any material facts and plaintiffs are entitled to judgment as a matter of law. In support of the motion plaintiffs refer the Court to:

1. The pleadings before the Court in this matter.
2. The Affidavit of Kye Trout, Jr. filed with this Motion.
3. The Statement of Facts as to which There Are No Genuine Issues filed with this motion.
4. Plaintiffs' memorandum in support of Motion For Summary Judgment filed herewith.

WHEREFORE, plaintiffs request that the Court determine plaintiffs are entitled to Summary Judgement as a matter of law and grant the following relief:

1. Declaration that Title I of the Crude Oil Windfall Profit Tax of 1980 becoming a public law no. 96223 is unconstitutional;
2. Adjudge that the excise tax under the Act was erroneously and improperly assessed by the defendant and collected from the taxpayer plaintiffs;
3. Order the defendant to refund to each of the taxpayer plaintiffs all payments for which refund has been requested and refused, with interest, illegally and improperly assessed by defendant and paid by plaintiffs;

4. Direct defendant to take no further action which would result in the assessment and collection of the special excise tax covered by the Complaint on domestic taxable crude oil under the Act; and

5. That this Court grant plaintiffs such other and further relief as may be just and proper.

Respectfully submitted this 15 day of February, 1982.

OF COUNSEL:

STEPHEN F. WILLIAMS
ROBERT F. NAGEL
Professors of Law
University of Colorado
School of Law
Campus Box 410
Boulder, CO 80309

HAROLD B. SCOGGINS, JR.
Independent Petroleum
Association of America
1101 16th Street, N.W.
Washington, D.C. 20036
(202) 957-4731

and

BROWN, DREW, APOSTOLOS,
MASSEY & SULLIVAN
500 Petroleum Building
Casper, WY 82601

By _____
WM. H. BROWN

and

/s/ Michael J. Sullivan
MICHAEL J. SULLIVAN
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

C80-0302

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

STATE OF NORTH DAKOTA

SS:

COUNTY OF BURLEIGH

AFFIDAVIT

KYE TROUT, JR., being first duly sworn, upon oath deposes and says:

My name is Kye Trout, Jr. I am a resident of Bismark, North Dakota. For a period of more than twenty-five years last past I have been engaged actively in the business of exploring for and producing oil and gas in the United States of America as an independent producer. I am chairman of the Board of Independent Petroleum Association of America (IPAA). The president of IPAA is C. John Miller.

Mr. Miller and I were invited by Atlantic Richfield Company and its wholly owned subsidiary, ARCO Alaska Inc., to examine certain Alaskan oil and gas properties in which ARCO Alaska Inc. has an interest. Between and including the dates of January 11 through January 15, 1982, Mr. Miller and I were guests of Mr. Paul Norgaard, president of ARCO Alaska Inc., and Mr. William W. Phelps, administrative assistant to the president of Atlantic Richfield Company, the parent company of ARCO Alaska Inc.

On that tour of Alaskan properties we inspected all of the facilities of ARCO Alaska Inc. in the Prudhoe Bay area and at Valdez, same being the opposite ends of Trans-Alaskan Pipeline System. We also inspected the Kuparuk River field which has been drilled and developed by ARCO Alaska Inc. The Kuparuk River field is in that part of the State of Alaska described in the Windfall Profit Tax Act in Sections 4991(b) and 4994(e), which is an area in which oil is

produced which is exempt from the taxing provisions of the Windfall Profit Tax Act.

During the inspection tour of production facilities, including the Kuparuk River field mention above and at the time stated, we learned from the officials of Atlantic Richfield Company and ARCO Alaska Inc. that the discovery well drilled in the Kuparuk River field was completed in the year 1969, and that during the time from 1969 through 1981 a total of seventy-one wells have been drilled. We also learned that on December 14, 1981 production in the Kuparuk River field was initiated and by the end of December 1981, the daily average rate of oil production from said producing wells in said field was approximately 80,000 barrels of oil per day. The above named officials of Atlantic Richfield Company and ARCO Alaska Inc. advised us that the projections made by ARCO Alaska Inc. in the due course of its business show that by the end of the year 1982, the daily average production of oil from the Kuparuk River field will approximate 250,000 barrels of oil per day. The completion date of the earliest producing well which is now producing in said field was February 2, 1976.

During our tour of the wells and producing facilities in the Kuparuk River field at the above stated times we observed oil actually being produced from wells in that field and the storage tanks into which such oil was being produced.

At IPAA we requested the Alaska Oil and Gas Conservation Commission to provide us the data which it had compiled on oil and gas production in the Kuparuk River field, in response to which we received the letter which is attached to this affidavit as Exhibit "A" and the Monthly Production and Injection Report which was enclosed with said Exhibit "A", which is marked as Exhibit "B". Exhibit "A" and Exhibit "B" are incorporated herein as a part of this affidavit. The letter from the Alaska Commission and its official report of production point out that production from that field commenced on December 14, 1981 and current production rates average slightly over 80,000 barrels of oil per day.

This affidavit is made for the purpose of showing that oil has been and is now being produced in commercial quantities by ARCO Alaska Inc. in the Kuparuk River field; that the daily average quantities of oil being produced are increasing and are projected to treble between the first of January 1982 and the end of December 1982. This affidavit is made for use in connection with a Motion for Summary Judgment which is projected to be filed in the above captioned case on or about February 16, 1982, and to evidence the personal knowledge of affiant as to the facts stated herein.

FURTHER Affiant sayeth not.

KYE TROUT, JR.

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE
THIS ____ DAY OF FEBRUARY, 1982.

MY COMMISSION EXPIRES:

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-0302K

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., PLAINTIFFS

AND

STATE OF TEXAS, ET AL., INTERVENOR-PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

**MOTION OF THE STATE
OF TEXAS FOR SUMMARY JUDGMENT**

The State of Texas, Intervenor-Plaintiff, by and through its Attorney General, Mark White, hereby moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. In support of its motion, Texas would show the Court the following:

I.

By its order of July 2, 1981, Texas' motion for leave to intervene in this cause was granted, thereby affording Texas the status of a full party. In its complaint in intervention, Texas seeks to have the Crude Oil Windfall Profit Tax of 1980, Pub. L. No. 96-223, declared unconstitutional and enjoined in its enforcement.

II.

Texas now moves the Court to declare the Crude Oil Windfall Profit Tax of 1980 to be unconstitutional as contrary to the uniformity clause of article I, section 8, clause 1 of the Constitution. Texas files herewith a brief in support of its motion and incorporates that brief herein for all purposes.

Respectfully submitted,

MARK WHITE

Attorney General of Texas

JOHN W. FAINTER, JR.

First Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-0302

JOHN PARTRIDGE, HARRY PTASYSKI, BERTON W. AVERY,
GOLDIE AVERY, FREDERICK S. JOHNSON AND
CALVIN PETROLEUM, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

v.

STATE OF TEXAS, STATE OF LOUISIANA,
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL. INTERVENORS

**CROSS MOTION OF DEFENDANT
FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure the defendant, United States of America, hereby moves this Court for an order entering summary judgment in favor of the United States because there is no genuine issue of material fact herein and defendant is entitled to judgment as a matter of law.

This motion is based on the pleadings, affidavits and briefs filed in this action and the grounds as set forth in defendant's briefs.

RICHARD A. STACY
United States Attorney

OF COUNSEL:

ROBERT LIVINGSTON

/s/ Robert L. Baker

ROBERT L. BAKER

Tax Division

U.S. Department of Justice

Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF WYOMING

No. C80-0302

JOHN PARTRIDGE, HARRY PTASYSKI, BERTON W. AVERY,
GOLDIE AVERY, FREDERICK S. JOHNSON AND
CALVIN PETROLEUM, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

v.

STATE OF TEXAS, STATE OF LOUISIANA,
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL. INTERVENORS

AFFIDAVIT

HOYLE H. HAMILTON, being duly sworn, deposes and says:

1. From January 1, 1979 to December 31, 1981, I served as a Commissioner on and Chairman of the Alaska Oil and Gas Conservation Commission (hereinafter referred to as "Commissioner"). See Alaska Statutes Section 31.05.005, *et seq.*

2. The authority of the Commission is applicable statewide including all land within the State of Alaska. See Alaska Statutes Section 31.05.027 and Regulation 20AAC25.505.

3. The powers and duties of the Commission are set forth in Alaska Statutes Section 31.05.030, *et seq.*

4. During my tenure as a Commissioner on and Chairman of the Commission, my principal duties and responsibilities were to oversee the day-to-day operation of the Commission and supervise the discharge of the statutorily prescribed duties and responsibilities of the Commission. See Alaska Statutes Sec. 31.05.027, *et seq.*

5. Pursuant to the power and authority vested in the Commission, all operators of oil wells in the State of Alaska are required to file, among other information, monthly production data and reports with the Commission. See Alaska

Statutes Section 31.05.030(d) and Regulations 20 AAC Sections 25.430, 25.505 and 25.515. This information is made available periodically to the public via the publication by the Commission of monthly and annual reports entitled, respectively, Bulletin and Statistical Report. See Regulations 20 AAC 25.537.

6. During the period February 28, 1980 through October 1, 1980, the only production of oil in the State of Alaska from a well located north of the Arctic Circle and/or north of the Alaska-Aleutian Range was from the Prudhoe Bay field, Prudhoe oil pool (reservoir), producing from the Sadlerochit formation.

/s/ Hoyle H. Hamilton
HOYLE H. HAMILTON

SUBSCRIBED AND SWORN TO BEFORE ME THIS 27TH
DAY OF JANUARY 1982, AT SEATTLE, WASHINGTON.

/s/ _____
Notary Public

My Commission expires: July 20, 1982

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF WYOMING

No. C80-0302

JOHN PARTRIDGE, HARRY PTASYSKI, BERTON W. AVERY,
GOLDIE AVERY, FREDERICK S. JOHNSON AND
CALVIN PETROLEUM, PLAINTIFFS

v.

STATE OF TEXAS, STATE OF LOUISIANA,
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
ET AL., INTERVENORS

AFFIDAVIT

LONNIE C. SMITH, being duly sworn, desposes and
says:

1. From January 1, 1979 to the present, I have served as a Commissioner on the Alaska Oil and Gas Conservation Commission (hereinafter referred to as "Commission"). See Alaska Statutes Section 31.05.005, *et. seq.*

2. The authority of the Commission is applicable state-wide including all land within the State of Alaska. See Alaska Statutes Section 31.05.027 and Regulations 20AAC25.505.

3. The powers and duties of the Commission are set forth in Alaska Statutes Section 31.05.030, *et seq.*

4. During my tenure as a Commissioner on the Commission, my principal duties and responsibilities are and were to assist and participate in the supervision of the day-to-day operation of the Commission and the discharge of the statutorily prescribed duties and responsibilities of the Commission. See Alaska Statutes Sec. 31.05.027, *et seq.*

5. Pursuant to the power and authority vested in the Commission, all operators of oil wells in the State of Alaska are required to file, among other information, monthly production data and reports with the Commission. See Alaska Statutes Section 31.05.030(d) and Regulations 20 AAC Sections 25.430, 25.505 and 25.515. This information is made available periodically to the public via the publication by the Commission of monthly and annual reports entitled, re-

spectively, Bulletin and Statistical Report. See Regulations 20 AAC 25.537.

6. During the period February 28, 1980 through October 1, 1980, the only production of oil in the State of Alaska from a well located north of the Arctic Circle and/or north of the Alaska-Aleutian Range was from the Prudhoe Bay field, Prudhoe oil pool (reservoir), producing from the Sadlerochit formation.

/s/ Lonnie C. Smith

LONNIE C. SMITH

Subscribed and sworn to before me this 11th day of January 1982 at Anchorage, Alaska.

My Commissions expires: May 20, 1985

/s/ Dickie R. Price

DICKIE R. PRICE

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C82-0050

JOHN PARTRIDGE, PLAINTIFF,

v.

UNITED STATES OF AMERICA, DEFENDANT

COMPLAINT

COMES NOW the plaintiff and for his complaint against the defendant respectfully allege and represent as follows:

COUNT ONE

I. Nature of the Action

1. This action arises under the Internal Revenue Laws of the United States of America. This action challenges the constitutionality of Title I of the Crude Oil Windfall profit Tax Act of 1980 (the "Act") (Public Law 96-223 entitled "Windfall Profit Tax on Domestic Crude Oil"). Although called a tax on profits, the tax imposed by the Act is an excise tax on produced domestic taxable crude oil. Plaintiff seeks to obtain a refund of the special excise taxes that have been illegally imposed on the domestic taxable crude oil of domestic oil producers and that have been illegally collected under the Act.

II. JURISDICTION

2. The jurisdiction of this Court is invoked under 28 U.S.C. § 1331(a) providing for original jurisdiction in the District Court of the United States over any suits arising under the Constitution and the laws of the United States of America. The jurisdiction of this Court is also invoked under the provisions of 28 U.S.C. § 1346(a)(1); the Federal Mandamus Statute (Public Law 87-749, 76 Stat. 744; 28 U.S.C. § 1361 *et. seq.*); Article I, Section 8, Clause 1 of the United States Constitution, and Amendment V of the United States Constitution.

III. Venue

3. This action is properly brought in this judicial district under the venue provisions of 28 U.S.C. § 1391(e) and 28 U.S.C. § 1402(a).

IV. Parties

4. Plaintiff, John Partridge, is a citizen of the State of Wyoming. Plaintiff Partridge is an independent domestic oil producer. Plaintiff Partridge has had a special excise tax imposed on a portion of his domestic taxable crude oil under the Act. Each purchaser of production from this plaintiff has withheld from payments for crude oil the tax under the Act for all taxable periods since March 1, 1980. Plaintiff Partridge is a consumer of petroleum products, some of which are prepared for domestic crude oil subject to the tax under the Act. Plaintiff taxpayer filed a claim for refund (Form 843) with the District Director of the United States Internal Revenue Service office at Cheyenne, Wyoming on or about October 17, 1980 in accordance with instructions by such Director to counsel for plaintiff. The claim which covered the period March 1, 1980 to September 30, 1980 was rejected and disallowed, a copy of the claim and rejection are attached hereto as Exhibits "A" & "B". As a result of such rejection plaintiff has filed and is currently a party to Civil Action No. C80-0302 pending before this Court. As a result of technical objections made by the defendant as to the filing of such claim for refund, plaintiff Partridge filed an appropriate and supplementary claim for refund (Form 843) with the District Director of the United States Internal Revenue Service Office at Cheyenne, Wyoming on or about June 25, 1981 covering the period March 1, 1980 to December 31, 1980. A copy of this claim for refund is attached hereto as Exhibit "C". More than six months has elapsed since the filing of such claim and under applicable statutes the same is accordingly deemed denied (26 U.S.C. 6532).

5. In each of the instances alleged in paragraph 6 above, the first purchaser of such domestic taxable crude oil, pursuant to the mandate of the Act, has deducted and withheld payment from the owners of said crude oil for that portion

of said crude oil equal to the calculated or estimated amount of the tax for payment over to the United States of America and, on information and belief, has paid into the Treasury of the United States of America all such sums withheld in accordance with the requirements of the Act, all without any consent or approval by the plaintiff herein.

6. Defendant is the United States of America.

V. Public Law 96-223

7. The Act (P.L. 96-223) imposes, effective March 1, 1980, a tax on all domestic taxable crude oil produced after February 29, 1980. Although called a tax on profits, the tax is a temporary excise tax on produced domestic taxable crude oil, imposed when the crude oil is removed from the premises. The tax is imposed on the holder of the economic interest in the oil, called the "producer" under the Act. Primary collection responsibility, however, is on the first purchaser of the crude oil. Domestically produced crude oil is subject to this excise tax unless it is specifically exempted by the Act. The Act provides for five different categories of exemptions, which are determined either on the basis of ownership classification or the location of the wells from which the oil is produced.

8. Under § 101(a)(1) of the Act, the taxable period of March 1, 1980 to March 31, 1980, is designated as a separate and complete taxable period [26 U.S.C. § 4996(b)(7)(a)]. Each calendar quarter beginning after March 31, 1980, is a separate and complete taxable period under the Act.

VII. The Act is Unconstitutional

9. One of the exemptions granted under the Act is on the basis of where the oil is located. The Act excludes certain Alaskan oil from the operation of the tax. [26 U.S.C. § 4991(b)(3)].

10. Section 101(a)(1) of the Act [26 U.S.C. § 4994(e)] defines exempt Alaskan oil as any crude oil (other than Sadlerochit oil) which is produced:

"(1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or

"(2) from a well located on the northly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System."

11. The United States Constitution, Article I, Section 8, Clause 1 provides:

"The Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; *but all Duties, Imposts and Excises shall be uniform throughout the United States.*" (Emphasis Added.)

This Constitutional requirement means that excise taxes must be levied uniformly on a geographical basis.

12. Section 101(a)(1) of the Act [26 U.S.C. § 4986(a)] classifies the tax as an excise tax.

13. Because the tax is not levied uniformly throughout the United States, it violates Article I, Section 8, Clause 1 of the United States Constitution.

14. This lack of uniformity results in unwarranted discrimination against those persons upon whose domestic taxable crude oil the tax is levied.

15. Congress designed the tax to raise \$227.3 billion in tax revenues over the period the tax is in effect. Because the tax burden is not evenly distributed, the plaintiff herein and other non-exempt producers of domestic taxable crude oil must bear a disproportionate amount of the \$227.3 billion tax burden created by the Act.

16. The legislative history of the Act demonstrates that the proper remedy for this unconstitutional situation is invalidation of the tax. Extension of the tax to those areas of Alaska not covered by the tax would significantly interfere with the announced goals of energy independence and increased petroleum availability.

17. As clearly appears from its legislative history, the Act was enacted for the stated purposes of reducing the dependence of the United States of America on foreign oil and encouraging domestic production of oil. In reality the Act will have the opposite effect and will increase the depend-

ence of the United States of America on foreign oil and will actually decrease domestic production of oil.

18. Although the purpose of the Act as appears from its legislative history may be reasonable, its application and effect are wholly unreasonable and unlawful. The Act, therefore, violates the due process clause of Amendment V of the United States Constitution.

19. Because there is no rational relationship between said purposes of the Act and the actual application and effect of the Act, it violates the due process clause of Amendment V of the United States Constitution.

20. There is no rational basis for distinguishing between the domestic taxable crude oil subject to the tax and property other than such domestic taxable crude oil. The Act results in an unwarranted discrimination against those owners and producers of domestic taxable crude oil who are subject to the tax, including plaintiff, and thus it violates the plaintiff's right of due process.

21. The tax cannot be justified as an attempt to reclaim high prices caused by the actions of members of the Organization of Petroleum Exporting Countries (OPEC) because the tax only increases the power of OPEC by decreasing domestic production of crude oil. The means and effect of the Act are not reasonably related to the purposes for which it was enacted, namely, increasing the energy independence of the United States of America. Therefore, the Act violates plaintiff's right of due process of law guaranteed by Amendment V to the United States Constitution.

22. The tax imposed by the Act has resulted in the taking of the property of plaintiff for public use without just compensation contrary to the United States Constitution, Amendment V, which prohibits the taking of private property for public use without just compensation.

23. The total number of persons and entities who are not exempt from imposition of the tax consists of approximately 12,000 producers and 2-½ million royalty owners which number comprises approximately one percent of the population of the United States of America. The United States Constitution, Amendment V, guarantees the political protection of minorities from the tyranny of the majority. It

prevents the arbitrary seizure of the property of minorities to serve the purposes of the majority.

24. The persons paying the tax under the Act are not compensated for the taking of their property either in a concrete form, or by sharing equally in the benefits of the tax. The burden of the tax falls heavily upon a small minority while the benefits of the tax are directed toward other segments of society (Section 102 of the Act).

25. The property of said minority is taken under the Act for the benefit of the majority, in total disregard of the political protections inherent in the concept of private property.

26. The discriminatory seizure of the private property of minorities for the benefit of the majority is exactly the evil that the United States Constitution sought to prohibit when it forbade the taking of private property for public use without just compensation. The Act directly contravenes this constitutional principle and thus should be declared unconstitutional.

27. The ultimate effect of the Act undermines the purported objective of achieving energy independence by the United States of America. Such ultimate effect imposes harm upon the American consumer and interferes with the private property protections necessary for the preservation of a free society.

WHEREFORE, plaintiff respectfully prays and requests:

1. That this Court adjudge, declare and decree that the Act is unconstitutional.

2. That this Court grant plaintiff such other and further relief as may be just and proper in the premises.

COUNT TWO

Count Seeking Refund of Excise Taxes Illegally Assessed and Collected

28. Plaintiff refers to and by this reference adopts and realleges all of the allegations contained in Count One, and like effect as if fully repeated at length herein.

29. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1346(a)(1).

30. Taxpayer plaintiff seeks to obtain a refund of all excise taxes illegally assessed and collected under the Act where his refund claims have been rejected or have been filed more than six months with the Internal Revenue Service without action.

WHEREFORE, plaintiff respectfully prays and requests:

1. That this Court adjudge that the excise tax under the Act was erroneously and improperly assessed by the defendant and collected from the plaintiff.

2. That this Court enter an order directing and commanding the defendant to refund to plaintiff all payments, with interest, illegally and improperly assessed by defendant and paid by plaintiff under the Act.

3. That this Court enter an order directing and commanding defendant to take no further action which would result in the assessment and collection of this special excise tax on the domestic taxable crude oil of domestic oil producers under the Act.

4. That this Court grant plaintiff such other and further relief as may be just and proper.

This Complaint is dated this ____ day of February, 1982.

OF COUNSEL:

Stephen F. Williams
Robert F. Nagel
Professors of Law
University of Colorado
School of Law
Campus Box 410
Boulder, CO 80309

HAROLD B. SCOGGINS, JR
Independent Petroleum
Association of America
1101 16th Street, N.W.
Washington, D.C. 20036
(202) 957-4731

and

BROWN, DREW, APOSTOLOS,
MASSEY & SULLIVAN
500 Petroleum Building
Casper, WY 82601

By _____

WM. H. BROWN

and

/s/ _____

MICHAEL J. SULLIVAN

Form 843
(Rev. June 1971)
Department of the Treasury
Internal Revenue Service

Claim

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Name of taxpayer or purchaser of stamps
JOHN PARTRIDGE, JR.
Number and street
BOX 2134
City or town, State, and ZIP code
CASPER, WYOMING 82602

Fill in applicable items—Use attachments if necessary

1 Your SSC of Security Number **567-09-3575** 2 Employer identification Number **N/A**
3 Principal Revenue Service Office where return (if any) was filed
OGDEN, UTAH
4 Name and address shown on return, if different from above

DATE

5 Period—prepare separate form for each taxable period
From **2/29** to **6/30** Amount to be refunded or abated **\$1135.30**

7 Dates of payment
VARIOUS DATES DURING ABOVE PERIOD

8 Type of tax
☐ Employment ☐ Estate ☐ Excise ☐ Gift ☐ Stamp **WINDFALL PROFITS**
9 Kind of return filed
☐ 706 ☐ 709 ☐ 720 ☐ 940 ☐ 941 ☐ 990-RP ☐ 4720 ☒ Other (specify) **WINDFALL PROFITS**

10 Explain why you believe the claim should be allowed and show computation of tax refund or abatement.

See attached explanation, Form Claim Item 10, 843

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signature **John Partridge, Jr.** Date **6/29/72** 1972

Director's Stamp
(Date received)

For Internal Revenue Service Use Only

- ☐ Refund of taxes illegally, erroneously, or erroneously collected.
☐ Refund of amount paid for stamps unused, or used in error or excess.
☐ Abatement of tax collected (not applicable to estate or gift taxes).

See instructions on back
751070-1

Form 843 (Rev. 6-71)

CLAIM**Item 10, Form 843**

The taxpayer seeks a refund of all taxes paid by him pursuant to the Crude Oil Windfall Profit Tax, as set forth in Chapter 45 of the Internal Revenue Code, imposed by Public Law 96-223 on producers of certain domestic crude oil.

The taxpayer has paid the tax for which refund is sought, which is imposed by section 4986 of the Internal Revenue Code, and which is withheld and paid under section 4995.

The statute is unconstitutional in its entirety. In particular, the Windfall Profit Tax is unconstitutional in the following respects:

1. It constitutes a taking of private property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

2. It establishes an unwarranted and irrational discrimination between the taxation of oil and of all other forms of income, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

3. It is an arbitrary and irrational tax utterly unable to advance the purposes which it allegedly serves, in violation of the Fifth Amendment to the United States Constitution.

4. If in fact it is an excise tax, it is an unconstitutional excise tax as it is not uniform throughout the United States, as required by Article 1, Section 8, Clause 1, of the United States Constitution.

The tax, in its entirety, is unconstitutional. Therefore, all amounts collected from the taxpayer, together with interest thereon from the date of collection, should be refunded.

NOTE: The listing of constitutional challenges in this claim for refund should not be viewed as waiving any procedural, computational or other grounds for refund.

DEPARTMENT OF THE TREASURY
Internal Revenue Service
OGDEN, UT 84201

In reply refer to: 29740125

Dec. 03, 1980 LTR 105C 8222 567-09-3575

Michel J Sullivan & William H Brown WP2237R

Brown Drew Apostolos Massey & Sullivan

500 Protroleum Bldg

Casper, WY 82601

Social Security Number: 567-09-3575

Kind of Tax: Windfall profit

Amount of Claim: \$1,135.30

Date Claim Received: Nov. 3, 1980

Dear Taxpayers:

We are sorry, but we cannot allow your claim for an adjustment to your tax for the period ended Sept. 30, 1980. This letter is your legal notice that your claim is fully disallowed.

We have disallowed the claim because the claim is based on your view that certain tax laws are unconstitutional, only the courts have authority to pass on such matters.

Reference John Partridge Junior

If you wish to bring suit or proceedings for the recovery of any tax, penalties or other moneys for which this disallowance notice is issued, you may do so by filing such a suit with the United States District Court having jurisdiction, or the United States Court of Claims. The law permits you to do this within 2 years from the mailing date of this letter. However, if you signed a waiver of the notice of disallowance (Form 2297), the period for bringing suit began to run on the date the waiver was filed.

EXHIBIT B

EXHIBIT C

Form **843**
(Rev. June 1978)
Department of the Treasury
Internal Revenue Service

Claim

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Name of taxpayer or purchaser of stamps
John F. Partridge

Number and street
P. O. Box 220

City or town, State, ZIP or 96001
Casper, Wyoming 82601

Fill in applicable items—Use attachments if necessary

1 Your Social Security Number
667-09-3573

2 Employer identification number
N/A

3 Internal Revenue Service office where return (if any) was filed
Omaha, Utah 84201

4 Name and address shown on return, if different from above
John F. Partridge & Wilma J. Partridge - address same

5 Period—prepare separate form for each taxable period
From **February 29, 1980** to **December 31, 1980**

6 Amount to be refunded or abated
\$ 3,468.32*

7 Dates of payment
Various dates during 1980.

8 Type of tax
☐ Employment ☐ Estate ☐ Excise ☐ Gift ☐ Stamp **Windfall Profit**

9 Kind of return filed
☐ 706 ☐ 709 ☐ 720 ☐ 940 ☐ 941 ☐ 990-PF ☐ 4720 ☒ Other (specify) **Windfall Profit**

10 Explain why you believe this claim should be allowed and show computation of tax refund or abatement.

See attached explanation

*Total 1980 windfall tax paid as shown on Forms 6248 attached less claim for overpayment as claimed on Form 6249 attached.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Director's Stamp
(Date received)

Signed

John F. Partridge

Dated

June 22

1981

For Internal Revenue Service Use Only

- ☐ Refund of taxes illegally, erroneously, or excessively collected.
☐ Refund of amount paid for stamps unused, or used in error or excess.
☐ Abatement of tax assessed (not applicable to estate or gift taxes)

See instructions on back.

Form 843 (Rev. 7-79)

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF WYOMING

Civil NO. C82-0050

JOHN PARTRIDGE, PLAINTIFF,

v.

UNITED STATES OF AMERICA, DEFENDANT.

ANSWER

Comes now the defendant, United States of America, by and through its counsel of record, Richard A. Stacy, United States Attorney for the District of Wyoming, Robert L. Baker, Trial Attorney, Tax Division, Department of Justice, and for its answer to the Plaintiff's Complaint responds as follows:

Denies each and every allegation of such complaint not admitted, qualified or otherwise specifically referred to below.

Further answering, defendant says that it:

COUNT ONE

1. Admits the allegations set forth in the first two sentences of paragraph 1 of plaintiff's complaint, but denies any averments that may be contained in the remaining allegations in paragraph 1.

2. Denies the allegations contained in paragraph 2 of plaintiff's complaint.

3. Admits the allegations contained in paragraph 3 of plaintiff's complaint.

4. Admits that plaintiff is a citizen of the State of Wyoming and is an independent oil producer; that on October 27, 1980, Plaintiff filed a claim for refund (Form 843) with the Internal Revenue Service which was disallowed; that on June 25, 1981, plaintiff filed a second claim for refund which has not been disallowed; that defendant lacks information or knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 4 of plaintiff's complaint, and, therefore, denies them.

5. Lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 5 of plaintiff's complaint, and, therefore, denies them.

6. Admits the allegations contained in paragraph 6 of plaintiff's complaint.

7. Denies any averments that may be contained in paragraph 7 of plaintiff's complaint, and further states that the said Act speaks for itself as to meaning and content.

8. Admits the allegations contained in paragraph 8 of plaintiff's complaint.

9. Denies the allegations contained in paragraph 9 of plaintiff's complaint and further states that the terms of the exemption speak for themselves as to meaning and content.

10. Admits the allegations contained in paragraph 10 of plaintiff's complaint.

11. Denies any averments that may be contained in paragraph 11 of plaintiff's complaint and further states that the Constitution speaks for itself as to meaning and content.

12. Denies any averments that may be contained in paragraph 12 of plaintiff's complaint.

13. Denies the allegations contained in paragraph 13 of plaintiff's complaint.

14. Denies the allegations contained in paragraph 14 of plaintiff's complaint.

15. Denies the allegations contained in paragraph 15 of plaintiff's complaint.

16. Denies the allegations contained in paragraph 16 of plaintiff's complaint.

17. Denies the allegations contained in paragraph 17 of plaintiff's complaint.

18. Denies the allegations contained in paragraph 18 of plaintiff's complaint.

19. Denies the allegations contained in paragraph 19 of plaintiff's complaint.

20. Denies the allegations contained in paragraph 20 of plaintiff's complaint.

21. Denies the allegations contained in paragraph 21 of plaintiff's complaint.

22. Denies the allegations contained in paragraph 22 of plaintiff's complaint.

23. Lacks information or knowledge sufficient to form a belief as to the allegations contained in the first sentence of paragraph 23 of plaintiff's complaint, and, therefore, denies them; and further states with respect to the balance of paragraph 23, that the Constitution speaks for itself as to meaning and content.

24. Denies the allegations contained in paragraph 24 of plaintiff's complaint.

25. Denies the allegations contained in paragraph 25 of plaintiff's complaint.

26. Denies the allegations contained in paragraph 26 of plaintiff's complaint.

27. Denies the allegations contained in paragraph 27 of plaintiff's complaint.

COUNT II

28. Defendant incorporates by reference its responses to the allegations contained in Count One of plaintiff's complaint.

29. Denies the allegations contained in paragraph 29 of plaintiff's complaint.

30. Admits the allegations contained in paragraph 30 of plaintiff's complaint except denies that the excise taxes assessed under the Act were illegally assessed or collected.

ADDITIONAL DEFENSE

The defendant further alleges that the Court has no jurisdiction to render a declaratory judgment with respect to federal taxes, (See 28 U.S.C. Sec. 2201) or to enjoin the assessment or collection of taxes (See 26 U.S.C. Sec. 7421) as requested by plaintiffs in the complaint.

WHEREFORE, the defendant, United States of America, having answered plaintiff's complaint, prays that judgment be entered in favor of the United States of America, that plaintiff's complaint be dismissed with prejudice and that this Court grant such other and additional relief as it deems proper.

RICHARD A. STACY
United States Attorney

/s/ **ROBERT L. BAKER**
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6513

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-0302

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
AMERICAN ASSOCIATION OF PETROLEUM LANDMEN,
ASSOCIATION OF OILWELL SERVICING CONTRACTORS,
EASTERN KANSAS OIL AND GAS ASSOCIATION, LIAISON
COMMITTEE OF COOPERATING OIL AND GAS ASSOCIATIONS,
ARKOMA BASIN INDEPENDENT GAS PRODUCERS
ASSOCIATION, CALIFORNIA INDEPENDENT PRODUCERS
ASSOCIATION, ILLINOIS OIL AND GAS ASSOCIATION,
INDIANA OIL AND GAS ASSOCIATION, INDEPENDENT OIL
AND GAS ASSOCIATION OF WEST VIRGINIA, INDEPENDENT
PETROLEUM ASSOCIATION OF MOUNTAIN STATES, KANSAS
INDEPENDENT OIL AND GAS ASSOCIATION, LOUISIANA
LANDOWNERS ASSOCIATION, INC., MICHIGAN OIL AND GAS
ASSOCIATION, NEW YORK STATE OIL PRODUCERS
ASSOCIATION, INDEPENDENT OIL PRODUCERS TRI-STATE,
INC., INDEPENDENT PETROLEUM ASSOCIATION OF NEW
MEXICO, KENTUCKY OIL AND GAS ASSOCIATION, LOUISIANA
ASSOCIATION OF INDEPENDENT PRODUCERS AND ROYALTY
OWNERS, NATIONAL STRIPPER WELL ASSOCIATION NORTH
TEXAS OIL AND GAS ASSOCIATION, OHIO OIL AND GAS
ASSOCIATION, PANHANDLE PRODUCERS AND ROYALTY
OWNERS ASSOCIATION, PENNSYLVANIA OIL AND GAS
ASSOCIATION, TENNESSEE OIL AND GAS ASSOCIATION,
VIRGINIA OIL AND GAS ASSOCIATION, OKLAHOMA
INDEPENDENT PETROLEUM ASSOCIATION, PENNSYLVANIA
GRADE CRUDE OIL ASSOCIATION, PERMIAN BASIN
PETROLEUM ASSOCIATION, TEXAS INDEPENDENT
PRODUCERS AND ROYALTY OWNERS ASSOCIATION, WEST
CENTRAL TEXAS OIL AND GAS ASSOCIATION, HARRY
PTASYSKI, JOHN PARTRIDE, BERTON W. AVERY, GOLDIE
AVERY, FREDERICK S. JOHNSON, AND CALVIN PETROLEUM
CORPORATION, PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

No. C82-0050

JOHN PARTRIDGE, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT.

ORDER CONSOLIDATING ACTIONS

Upon consent of the parties and for good cause shown;
NOW, THEREFORE, IT IS

ORDERED that the above-entitled actions be and the same are hereby consolidated for trial pursuant to the provisions of Rule 42 of the Federal Rules of Civil Procedure.

Dated this 10th day of June, 1982.

/s/

EWING T. KERR

U.S. District Judge

Supreme Court of the United States

No. 82-1066

UNITED STATES OF AMERICA, APPELLANT

v.

HARRY PTASYSKI, ET AL.

APPEAL from the United States District Court for the District of Wyoming.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

February 22, 1983